

***A Reference Guide
to the Legal Basics for National Park
Service Concessioners***

The Law & Policy and How to Make Use of Them



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Concessioners***

The Law & Policy and How to Make Use of Them

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1. The concession statute: NPS Concessions Management Improvement Act of 1998

Introduction

The statutory authority which specifically controls National Park Service (NPS) concessions is the National Park Service Concessions Management Improvement Act of 1998 which is set out at 54 U.S.C. § 101911 *et seq.* (the 1998 Act). After Congress enacted the 1998 Act, NPS created regulations to implement the statute, which are set out at 36 C.F.R. Part 51 and discussed in Chapter 2. While both the statute and the regulations are legally binding on NPS, the statute takes precedence to the extent the regulations may conflict with it. Even though NPS concessioners are in fact government contractors, NPS concession contracts are unique and are not governed by most of the typical government contract laws. Instead, they are primarily controlled by the law and regulations referenced above.¹

Concession operations themselves are authorized pursuant to Congress' direction that NPS "promote and regulate the use of the National Park System" and, along with other priorities, provide for the enjoyment of the National Parks. The specific direction from Congress is set out below:

The Secretary, acting through the Director of the National Park Service, shall promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.[²]

While NPS authorized concession operations have existed as long as National Parks have existed, the 1998 Act represented a significant change from the past by repealing the prior concession law and enacting a new set of legal requirements and provisions to guide concession operations. The new law changed many aspects of NPS concessions, including a new focus on competition and a switch from what was referred to as "possessory interest" to what is now known as "leasehold surrender interest" as the basic method of protecting a concessioner's financial interest in the structures which it uses in its operations.

¹ *YRT Services Corp. v. United States*, 28 Fed. Cl. 366, 371 (1993).

² 54 U.S.C. § 100101(a).

The National Park Service Concessions Management Improvement Act of 1998 is set out below.

National Park Service Concessions Management Improvement Act of 1998

- § 101911 Definitions
- § 101912 Findings and declaration of policy
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- § 101924 Promotion of sale of Indian, Alaska Native, Native Samoan and Native Hawaiian handicrafts
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- § 101926 Regulations

§ 101911- Definitions

(1) Advisory Board.--The term “Advisory Board” means the National Park Service Concessions Management Advisory Board established under section 101919 of this title.

(2) Preferential right of renewal.--The term “preferential right of renewal” means the right of a concessioner, subject to a determination by the Secretary that the facilities or services authorized by a prior contract continue to be necessary and appropriate within the meaning of section 101912 of this title, to match the terms and conditions of any competing proposal that the Secretary determines to be the best proposal for a proposed new concession contract that

authorizes the continuation of the facilities and services provided by the concessioner under its prior contract.

§ 101912- Findings and declaration of policy

(a) Findings.--In furtherance of section 100101(a), Congress finds that the preservation and conservation of System unit resources and values requires that public accommodations, facilities, and services that have to be provided within those System units should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that--

(1) visitation will not unduly impair those resources and values; and

(2) development of public accommodations, facilities, and services within System units can best be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the System units.

(b) Declaration of policy.--It is the policy of Congress that the development of public accommodations, facilities, and services in System units shall be limited to accommodations, facilities, and services that—

(1) are necessary and appropriate for public use and enjoyment of the System unit in which they are located; and

(2) are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the System unit.

§ 101913- Award of concession contracts

In furtherance of the findings and policy stated in section 101912 of this title, and except as provided by this subchapter or otherwise authorized by law, the Secretary shall utilize concession contracts to authorize a person, corporation, or other entity to provide accommodations, facilities, and services to visitors to System units. Concession contracts shall be awarded as follows:

(1) Competitive selection process.--Except as otherwise provided in this section, all proposed concession contracts shall be awarded by the Secretary to the person, corporation, or other entity submitting the best proposal, as determined by the Secretary through a competitive selection process. The competitive process shall include simplified procedures for small, individually-owned entities seeking award of a concession contract.

(2) Solicitation of proposals.--Except as otherwise provided in this section, prior to awarding a new concession contract (including renewals or extensions of existing concession contracts) the Secretary--

(A) shall publicly solicit proposals for the concession contract; and

(B) in connection with the solicitation, shall--

(i) prepare a prospectus and publish notice of its availability at least once in local or national newspapers or trade publications, by electronic means, or both, as appropriate; and

(ii) make the prospectus available on request to all interested persons.

(3) Information to be included in prospectus.--The prospectus shall include the following information:

(A) The minimum requirements for the contract as set forth in paragraph (4).

(B) The terms and conditions of any existing concession contract relating to the services and facilities to be provided, including all fees and other forms of compensation provided to the United States by the concessioner.

(C) Other authorized facilities or services that may be provided in a proposal.

(D) Facilities and services to be provided by the Secretary to the concessioner, including public access, utilities, and buildings.

(E) An estimate of the amount of compensation due an existing concessioner from a new concessioner under the terms of a prior concession contract.

(F) A statement as to the weight to be given to each selection factor identified in the prospectus and the relative importance of those factors in the selection process.

(G) Other information related to the proposed concession operation that is provided to the Secretary pursuant to a concession contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals.

(H) Where applicable, a description of a preferential right to the renewal of the proposed concession contract held by an existing concessioner as set forth in paragraph (7).

(4) Consideration of proposals.--

(A) Minimum requirements.--No proposal shall be considered that fails to meet the minimum requirements as determined by the Secretary. The minimum requirements shall include the following:

(i) The minimum acceptable franchise fee or other forms of consideration to the Federal Government.

(ii) Any facilities, services, or capital investment required to be provided by the concessioner.

(iii) Measures necessary to ensure the protection, conservation, and preservation of resources of the System unit.

(B) Rejection of proposal.--The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that--

(i) the person, corporation, or entity is not qualified or is not likely to provide satisfactory service; or

(ii) the proposal is not responsive to the objectives of protecting and preserving resources of the System unit and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(C) All proposals fail to meet minimum requirements or are rejected.--If all proposals submitted to the Secretary fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(D) Terms and conditions materially amended or not incorporated in contract.--The Secretary may not execute a concession contract that materially amends or does not incorporate the proposed terms and conditions of the concession contract as set forth in the applicable prospectus. If proposed material amendments or changes are considered appropriate by the Secretary, the Secretary shall resolicit offers for the concession contract incorporating the material amendments or changes.

(5) Selection of the best proposal.--

(A) Factors in selection.--In selecting the best proposal, the Secretary shall consider the following principal factors:

(i) The responsiveness of the proposal to the objectives of protecting, conserving, and preserving resources of the System unit and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(ii) The experience and related background of the person, corporation, or entity submitting the proposal, including the past performance and expertise of the person, corporation or entity in providing the same or similar facilities or services.

(iii) The financial capability of the person, corporation, or entity submitting the proposal.

(iv) The proposed franchise fee, except that consideration of revenue to the United States shall be subordinate to the objectives of protecting, conserving, and preserving resources of the System unit and of providing necessary and appropriate facilities to the public at reasonable rates.

(B) Secondary factors.--The Secretary may also consider such secondary factors as the Secretary considers appropriate.

(C) Development of regulations.--In developing regulations to implement this subchapter, the Secretary shall consider the extent to which plans for employment of Indians (including Native Alaskans) and involvement of businesses owned by Indians, Indian tribes, or Native Alaskans in the operation of a concession contract should be identified as a factor in the selection of a best proposal under this section.

(6) Congressional notification.--

(A) In general.--The Secretary shall submit any proposed concession contract with anticipated annual gross receipts in excess of \$5,000,000 or a duration of more than 10 years to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(B) Waiting period.--The Secretary shall not award any proposed concession contract to which subparagraph (A) applies until at least 60 days subsequent to the notification of both Committees.

(7) Preferential right of renewal.--

(A) In general.--Except as provided in subparagraph (B), the Secretary shall not grant a concessioner a preferential right to renew a concession contract, or any other form of preference to a concession contract.

(B) Exception.--The Secretary shall grant a preferential right of renewal to an existing concessioner with respect to proposed renewals of the categories of concession contracts described by paragraph (8), subject to the requirements of that paragraph.

(C) Entitlement to award of new contract.--A concessioner that successfully exercises a preferential right of renewal in accordance with the requirements of this subchapter shall be entitled to award of the proposed new concession contract to which the preference applies.

(8) Outfitter and guide services and small contracts.--

(A) Application.--Paragraph (7) shall apply only to the following:

(i) Subject to subparagraph (B), concession contracts that solely authorize the provision of specialized backcountry outdoor recreation guide services that require the employment of specially trained and experienced guides to accompany System unit visitors in the backcountry so as to provide a safe and enjoyable experience for visitors who otherwise may not have the skills and equipment to engage in that activity.

(ii) Subject to subparagraph (C), concession contracts with anticipated annual gross receipts under \$500,000.

(B) Outfitting and guide concessioners.--

(i) Description.--Outfitting and guide concessioners, where otherwise qualified, include concessioners that provide guided river running, hunting, fishing, horseback, camping, and mountaineering experiences.

(ii) When entitled to preferential right.--An outfitting and guide concessioner is entitled to a preferential right of renewal under this subchapter only if--

(I) the contract with the outfitting and guide concessioner does not grant the concessioner any interest, including any leasehold surrender interest or possessory interest, in capital improvements on land owned by the United States within a System unit, other than a capital improvement constructed by a concessioner pursuant to the terms of a concession contract prior to November 13, 1998, or constructed or owned by a concessioner or the concessioner's predecessor before the subject land was incorporated into the System;

(II) the Secretary determines that the concessioner has operated satisfactorily during the term of the contract (including any extension); and

(III) the concessioner has submitted a responsive proposal for a proposed new concession contract that satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(C) Contract with estimated gross receipts of less than \$500,000.--A concessioner that holds a concession contract that the Secretary estimates will result in gross annual receipts of less than \$500,000 if renewed shall be entitled to a preferential right of renewal under this subchapter if-

(i) the Secretary has determined that the concessioner has operated satisfactorily during the term of the contract (including any extension); and

(ii) the concessioner has submitted a responsive proposal for a proposed new concession contract that satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(9) New or Additional Services. The Secretary may propose to amend the applicable terms of an existing concessions contract to provide new and additional services where the Secretary determines the services are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit. Such new and additional services shall not represent a material change to the required and authorized services as set forth in the applicable prospectus or contract.

(10) Authority of Secretary not limited.--Nothing in this subchapter shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this subchapter.

(11) Exceptions.--Notwithstanding this section, the Secretary may award, without public solicitation, the following:

(A) Temporary contract.--To avoid interruption of services to the public at a System unit, the Secretary may award a temporary concession contract or an extension of an existing concessions contract for a term not to exceed 3 years, except that prior to making the award, the Secretary shall take all reasonable and appropriate steps to consider alternatives to avoid the interruption.

(B) Contract in extraordinary circumstances.--The Secretary may award a concession contract in extraordinary circumstances where compelling and equitable considerations require the award of a concession contract to a particular party in the public interest. Award of a concession contract under this subparagraph shall not be made by the Secretary until at least 30 days after—

(i) publication in the Federal Register of notice of the Secretary's intention to award the contract and the reasons for the action; and

(ii) submission of notice to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives.

§ 101914- Term of concession contracts

A concession contract entered into pursuant to this subchapter shall generally be awarded for a term of 10 years or less. The Secretary may award a contract for a term of up to 20 years if the Secretary determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term.

§ 101915- Protection of concessioner investment

(a) Definitions.--In this section:

(1) Capital improvement.--The term "capital improvement" means a structure, a fixture, or nonremovable equipment provided by a concessioner pursuant to the terms of a concession contract and located on land of the United States within a System unit.

(2) Consumer Price Index.--The term "Consumer Price Index" means--

(A) the “Consumer Price Index--All Urban Consumers” published by the Bureau of Labor Statistics of the Department of Labor; or

(B) if the Index is not published, another regularly published cost-of-living index approximating the Consumer Price Index.

(b) Leasehold surrender interest in capital improvements.--A concessioner that constructs a capital improvement on land owned by the United States within a System unit pursuant to a concession contract shall have a leasehold surrender interest in the capital improvement subject to the following terms and conditions:

(1) In general.--A concessioner shall have a leasehold surrender interest in each capital improvement constructed by a concessioner under a concession contract, consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner’s leasehold surrender interest in the capital improvement.

(2) Pledge as security.--A leasehold surrender interest may be pledged as security for financing of a capital improvement or the acquisition of a concession contract when approved by the Secretary pursuant to this subchapter.

(3) Transfer and relinquishment or waiver of interest.--A leasehold surrender interest shall be transferred by the concessioner in connection with any transfer of the concession contract and may be relinquished or waived by the concessioner.

(4) Limit on extinguishing or taking interest.--A leasehold surrender interest shall not be extinguished by the expiration or other termination of a concession contract and may not be taken for public use except on payment of just compensation.

(5) Value of interest.--The value of a leasehold surrender interest in a capital improvement shall be an amount equal to the initial value (construction cost of the capital improvement), increased (or decreased) by the same percentage increase (or decrease) as the percentage increase (or decrease) in the Consumer Price Index, from the date of making the investment in the capital improvement by the concessioner to the date of payment of the value of the leasehold surrender interest, less depreciation of the capital improvement as evidenced by the condition and prospective serviceability in comparison with a new unit of like kind.

(6) Value of interest in certain new concession contracts.--

(A) How value is determined.--The Secretary may provide, in any new concession contract that the Secretary estimates will have a leasehold surrender interest of more than \$10,000,000, that the value of any leasehold surrender interest in a capital improvement shall be based on--

(i) a reduction on an annual basis, in equal portions, over the same number of years as the time period associated with the straight line depreciation of the initial value (construction cost of the capital improvement), as provided by applicable Federal income tax laws and regulations in effect on November 12, 1998; or

(ii) an alternative formula that is consistent with the objectives of this subchapter.

(B) When alternative formula may be used.--The Secretary may use an alternative formula under subparagraph (A)(ii) only if the Secretary determines, after scrutiny of the financial and other circumstances involved in the particular concession contract (including providing notice in the Federal Register and opportunity for comment), that the alternative formula is, compared to the standard method of determining value provided for in paragraph (5), necessary to provide a fair return to the Federal Government and to foster competition for the new contract by providing a reasonable opportunity to make a profit under the new contract. If no responsive offers are received in response to a solicitation that includes the alternative formula, the concession opportunity shall be resolicited with the leasehold surrender interest value as described in paragraph (5).

(7) Increase in value of interest.--Where a concessioner, pursuant to the terms of a concession contract, makes a capital improvement to an existing capital improvement in which the concessioner has a leasehold surrender interest, the cost of the additional capital improvement shall be added to the then-current value of the concessioner's leasehold surrender interest.

(c) Special rule for possessory interest existing before November 13, 1998.--

(1) In general.--A concessioner that has obtained a possessory interest (as defined pursuant to the Act of October 9, 1965 (known as the National Park Service Concessions Policy Act; Public Law 89-249, 79 Stat. 969), as in effect on November 12, 1998) under the terms of a concession contract entered into before November 13, 1998, shall, on the expiration or termination of the concession contract, be entitled to receive

compensation for the possessory interest improvements in the amount and manner as described by the concession contract. Where that possessory interest is not described in the existing concession contract, compensation of possessory interest shall be determined in accordance with the laws in effect on November 12, 1998.

(2) Existing concessioner awarded a new contract.--A concessioner awarded a new concession contract to replace an existing concession contract after November 13, 1998, instead of directly receiving the possessory interest compensation, shall have a leasehold surrender interest in its existing possessory interest improvements under the terms of the new concession contract and shall carry over as the initial value of the leasehold surrender interest (instead of construction cost) an amount equal to the value of the existing possessory interest as of the termination date of the previous concession contract. In the event of a dispute between the concessioner and the Secretary as to the value of the possessory interest, the matter shall be resolved through binding arbitration.

(3) New concessioner awarded a contract.--A new concessioner awarded a concession contract and required to pay a prior concessioner for possessory interest in prior improvements shall have a leasehold surrender interest in the prior improvements. The initial value in the leasehold surrender interest (instead of construction cost) shall be an amount equal to the value of the existing possessory interest as of the termination date of the previous concession contract.

(4) De novo review of value determination.--If the Secretary, or either party to a value determination proceeding conducted under a Service concession contract issued before November 13, 1998, considers that the value determination decision issued pursuant to the proceeding misinterprets or misapplies relevant contractual requirements or their underlying legal authority, the Secretary or either party may seek, within 180 days after the date of the decision, de novo review of the value determination decision by the United States Court of Federal Claims. The Court of Federal Claims may make an order affirming, vacating, modifying or correcting the determination decision.

(d) Transition to successor concessioner.--On expiration or termination of a concession contract entered into after November 13, 1998, a concessioner shall be entitled under the terms of the concession contract to receive from the United States or a successor concessioner the value of any leasehold surrender interest in a capital improvement as of the date of the expiration or termination. A successor concessioner shall have a leasehold surrender interest in the capital improvement under the terms of a new concession contract and the initial value of the leasehold surrender interest in the capital improvement (instead of construction cost) shall be the amount

of money the new concessioner is required to pay the prior concessioner for its leasehold surrender interest under the terms of the prior concession contract.

(e) Title to improvements.--Title to any capital improvement constructed by a concessioner on land owned by the United States in a System unit shall be vested in the United States.

§ 101916- Reasonableness of rates and charges

(a) In general.--A concession contract shall permit the concessioner to set reasonable and appropriate rates and charges for facilities, goods, and services provided to the public, subject to approval under subsection (b).

(b) Approval by Secretary required.--

(1) Factors to consider.--A concessioner's rates and charges to the public shall be subject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable. The Secretary shall approve rates and charges that the Secretary determines to be reasonable and appropriate. Unless otherwise provided in the concession contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant by the Secretary:

- (A) Length of season.
- (B) Peakloads.
- (C) Average percentage of occupancy.
- (D) Accessibility.
- (E) Availability and costs of labor and materials.
- (F) Type of patronage.

(2) Rates and charges not to exceed market rates and charges.--Rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking into account the factors referred to in paragraph (1).

(c) Implementation of recommendations.--Not later than 6 months after receiving recommendations from the Advisory Board regarding concessioner rates and charges to the public, the Secretary shall implement the recommendations or report to Congress the reasons for not implementing the recommendations.

§ 101917- Franchise fees

(a) In general.--A concession contract shall provide for payment to the Federal Government of a franchise fee or other monetary consideration as determined by the Secretary, on consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Probable value shall be based on a reasonable opportunity for net profit in relation to capital invested and the obligations of the concession contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving System units and of providing necessary and appropriate services for visitors at reasonable rates.

(b) Provisions to be specified in contract.--The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract shall be specified in the concession contract and may be modified only to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the concession contract. The Secretary shall include in concession contracts with a term of more than 5 years a provision that allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of extraordinary unanticipated changes. The provision shall provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree on an adjustment to the franchise fee in those circumstances.

(c) Special account in Treasury.--

(1) Deposit and availability.--All franchise fees (and other monetary consideration) paid to the United States pursuant to concession contracts shall be deposited in a special account established in the Treasury. Twenty percent of the funds deposited in the special account shall be available for expenditure by the Secretary, without further appropriation, to support activities throughout the System regardless of the System unit in which the funds were collected. The funds deposited in the special account shall remain available until expended.

(2) Subaccount for each System unit.--There shall be established within the special account a subaccount for each System unit. Each subaccount shall be credited with 80 percent of the franchise fees (and other monetary consideration) collected at a single System unit under concession contracts. The funds credited to the subaccount for a

System unit shall be available for expenditure by the Secretary, without further appropriation, for use at the System unit for visitor services and for purposes of funding high-priority and urgently necessary resource management programs and operations. The funds credited to a subaccount shall remain available until expended.

§ 101918- Transfer or conveyance of concession contracts or leasehold surrender interests

(a) Approval of Secretary.--No concession contract or leasehold surrender interest may be transferred, assigned, sold, or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary.

(b) Conditions.--The Secretary shall approve a transfer or conveyance described in subsection (a) unless the Secretary finds that--

(1) the individual, corporation, or other entity seeking to acquire a concession contract is not qualified or able to satisfy the terms and conditions of the concession contract;

(2) the transfer or conveyance would have an adverse impact on--

(A) the protection, conservation, or preservation of the resources of the System unit; or

(B) the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(3) the terms of the transfer or conveyance are likely, directly or indirectly, to--

(A) reduce the concessioner's opportunity for a reasonable profit over the remaining term of the concession contract;

(B) adversely affect the quality of facilities and services provided by the concessioner; or

(C) result in a need for increased rates and charges to the public to maintain the quality of the facilities and services.

(c) Modification or renegotiation of terms.--The terms and conditions of any concession contract under this section shall not be subject to modification or open to renegotiation by the Secretary because of a transfer or conveyance described in subsection (a) unless the transfer or conveyance would have an adverse impact as described in subsection (b)(2).

§ 101919- National Park Service Concessions Management Advisory Board

(a) Establishment and purpose.--There is a National Park Service Concessions Management Advisory Board whose purpose shall be to advise the Secretary and Service on matters relating to management of concessions in the System.

(b) Duties.--

(1) Advice.--The Advisory Board shall advise on each of the following:

(A) Policies and procedures intended to ensure that services and facilities provided by concessioners--

(i) are necessary and appropriate;

(ii) meet acceptable standards at reasonable rates with a minimum of impact on System unit resources and values; and

(iii) provide the concessioners with a reasonable opportunity to make a profit.

(B) Ways to make Service concession programs and procedures more cost effective, more process efficient, less burdensome, and timelier.

(2) Recommendations.--The Advisory Board shall make recommendations to the Secretary regarding each of the following:

(A) The Service contracting with the private sector to conduct appropriate elements of concession management.

(B) Ways to make the review or approval of concessioner rates and charges to the public more efficient, less burdensome, and timelier.

(C) The nature and scope of products that qualify as Indian, Alaska Native, and Native Hawaiian handicrafts within the meaning of this subchapter.

(D) The allocation of concession fees.

(3) Annual report.--The Advisory Board shall provide an annual report on its activities to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(c) Advisory Board membership.--Members of the Advisory Board shall be appointed on a staggered basis by the Secretary for a term not to exceed 4 years and shall serve at the pleasure of the Secretary. The Advisory Board shall be comprised of not more than 7 individuals appointed from among citizens of the United States not in the employment of the Federal Government and not in the employment of or having an interest in a Service concession. Of the 7 members of the Advisory Board--

(1) one member shall be privately employed in the hospitality industry and have both broad knowledge of hotel or food service management and experience in the parks and recreation concession business;

(2) one member shall be privately employed in the tourism industry;

(3) one member shall be privately employed in the accounting industry;

(4) one member shall be privately employed in the outfitting and guide industry;

(5) one member shall be a State government employee with expertise in park concession management;

(6) one member shall be active in promotion of traditional arts and crafts; and

(7) one member shall be active in a nonprofit conservation organization involved in parks and recreation programs.

(d) Service on Advisory Board.--Service of an individual as a member of the Advisory Board shall not be deemed to be service or employment bringing the individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of individuals, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Advisory Board shall not be deemed service in an appointive or elective position in the Federal Government for purposes of section 8344 of title 5 or other comparable provisions of Federal law.

(e) Termination.--The Advisory Board shall continue to exist until December 31, 2009. In all other respects, it shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

§ 101920- Contracting for services

(a) Contracting authorized.--

(1) Management elements for which contract required to maximum extent practicable.-
-To the maximum extent practicable, the Secretary shall contract with private entities to conduct or assist in elements of the management of the Service concession program considered by the Secretary to be suitable for non-Federal performance. Those management elements shall include each of the following:

- (A) Health and safety inspections.
- (B) Quality control of concession operations and facilities.
- (C) Strategic capital planning for concession facilities.
- (D) Analysis of rates and charges to the public.

(2) Management elements for which contract allowed.--The Secretary may also contract with private entities to assist the Secretary with each of the following:

- (A) Preparation of the financial aspects of prospectuses for Service concession contracts.
- (B) Development of guidelines for a System capital improvement and maintenance program for all concession occupied facilities.
- (C) Making recommendations to the Director regarding the conduct of annual audits of concession fee expenditures.

(b) Other management elements.--The Secretary shall consider, taking into account the recommendations of the Advisory Board, contracting out other elements of the concessions management program, as appropriate.

(c) Authority of Secretary not diminished.--Nothing in this section shall diminish the governmental responsibilities and authority of the Secretary to administer concession contracts and activities pursuant to this subchapter and section 100101(a), chapter 1003, and sections 100751(a), 100752, 100753, and 102101 of this title. The Secretary reserves the right to make the final decision or contract approval on contracting services dealing with the management of the Service concessions program under this section.

§ 101921- Multiple contracts within a System unit

If multiple concession contracts are awarded to authorize concessioners to provide the same or similar outfitting, guiding, river running, or other similar services at the same approximate location or resource within a System unit, the Secretary shall establish a comparable franchise fee structure for those contracts or similar contracts, except that the terms and conditions of any existing concession contract shall not be subject to modification or open to renegotiation by the Secretary because of an award of a new contract at the same approximate location or resource.

§ 101922- Use of nonmonetary consideration in concession contracts

Section 1302 of title 40 shall not apply to concession contracts awarded by the Secretary pursuant to this subchapter.

§ 101923- Recordkeeping requirements

(a) In general.--A concessioner and any subconcessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of a concession contract have been and are being faithfully performed. The Secretary and any authorized representative of the Secretary shall, for the purpose of audit and examination, have access to those records and to other records of the concessioner or subconcessioner pertinent to the concession contract and all terms and conditions of the concession contract.

(b) Access to records by Comptroller General.--The Comptroller General and any authorized representative of the Comptroller General shall, until the expiration of 5 calendar years after the close of the business year of each concessioner or subconcessioner, have access to and the right to examine any pertinent records described in subsection (a) of the concessioner or subconcessioner related to the contract involved.

§ 101924- Promotion of sale of Indian, Alaska Native, Native Samoan and Native Hawaiian handicrafts

(a) In general.--Promoting the sale of authentic United States Indian, Alaskan Native, Native Samoan, and Native Hawaiian handicrafts relating to the cultural, historical, and geographic characteristics of System units is encouraged, and the Secretary shall ensure that there is a continuing effort to enhance the handicraft trade where it exists and establish the trade in appropriate areas where the trade does not exist.

(b) Exemption from franchise fee.--In furtherance of the purposes of subsection (a), the revenue derived from the sale of United States Indian, Alaska Native, Native Samoan, and Native Hawaiian handicrafts shall be exempt from any franchise fee payments under this subchapter.

§ 101925- Commercial use authorizations

(a) In general.--To the extent specified in this section, the Secretary, on request, may authorize a private person, corporation, or other entity to provide services to visitors to System units through a commercial use authorization. A commercial use authorization shall not be considered to be a concession contract under this subchapter and no other section of this subchapter shall be applicable to a commercial use authorization except where expressly stated.

(b) Criteria for issuance of commercial use authorizations.--

(1) Required determinations.--The authority of this section may be used only to authorize provision of services that the Secretary determines--

(A) will have minimal impact on resources and values of a System unit; and

(B) are consistent with the purpose for which the System unit was established and with all applicable management plans and Service policies and regulations.

(2) Elements of commercial use authorization.--The Secretary shall--

(A) require payment of a reasonable fee for issuance of a commercial use authorization, the fees to remain available without further appropriation to be used, at a minimum, to recover associated management and administrative costs;

(B) require that the provision of services under a commercial use authorization be accomplished in a manner consistent to the highest practicable degree with the preservation and conservation of System unit resources and values;

(C) take appropriate steps to limit the liability of the United States arising from the provision of services under a commercial use authorization;

(D) have no authority under this section to issue more commercial use authorizations than are consistent with the preservation and proper management of System unit resources and values; and

(E) shall establish other conditions for issuance of a commercial use authorization that the Secretary determines to be appropriate for the protection of visitors, provision of adequate and appropriate visitor services, and protection and proper management of System unit resources and values.

(c) Limitations.--Any commercial use authorization shall be limited to--

(1) commercial operations with annual gross receipts of not more than \$25,000 resulting from services originating and provided solely within a System unit pursuant to the commercial use authorization;

(2) the incidental use of resources of the System unit by commercial operations that provide services originating and terminating outside the boundaries of the System unit; or

(3) (A)[sic] uses by organized children's camps, outdoor clubs, and nonprofit institutions (including back country use); and

(B) other uses, as the Secretary determines to be appropriate.

(d) Nonprofit institutions.--Nonprofit institutions are not required to obtain commercial use authorizations unless taxable income is derived by the institution from the authorized use.

(e) Prohibition on construction.--A commercial use authorization shall not provide for the construction of any structure, fixture, or improvement on federally-owned land within the boundaries of a System unit.

(f) Duration.--The term of any commercial use authorization shall not exceed 2 years. No preferential right of renewal or similar provisions for renewal shall be granted by the Secretary.

(g) Other contracts.--A person, corporation, or other entity seeking or obtaining a commercial use authorization shall not be precluded from submitting a proposal for concession contracts.

§ 101926- Regulations

(a) In general.--The Secretary shall prescribe regulations appropriate for the implementation of this subchapter.

(b) Contents.--The regulations--

(1) shall include appropriate provisions to ensure that concession services and facilities to be provided in a System unit are not segmented or otherwise split into separate concession contracts for the purposes of seeking to reduce anticipated annual gross receipts of a concession contract below \$500,000; and

(2) shall further define the term “United States Indian, Alaskan Native, and Native Hawaiian handicrafts” for the purposes of this subchapter.



2. The Visitor Experience Improvements Authority

Introduction

In 2016, as part of the National Park Service Centennial Act, Congress enacted the Visitor Experience Improvements Authority (VEIA). The VEIA provides NPS with an alternate authority for issuing contracts for concession operations. NPS has previously issued concession contracts pursuant to the requirements of the National Park Service Concession Management Improvement Act of 1998. The new statute, however, contains very few guidelines as to how NPS can go about awarding or setting up contracts issued under its authority.

VEIA may not be used to award contracts for outfitter and guide services or for contracts where a concessioner may have a preferential right of renewal, and contract terms may not exceed 10 years. The statute also prohibits any granting of leasehold surrender interest. Contracts must also be awarded “through a competitive selection process.” No other requirements or restrictions are imposed on NPS under the new law. NPS has stated that the new law gives the agency additional contracting flexibility to expand, modernize and improve the condition of concession facilities and operations. The VEIS will expire in 2023 unless reauthorized by Congress.

The VEIA is set out below.

Visitor Experience Improvements Authority

- § 101931 Contract Authority
- § 101932 Award of Commercial Contracts
- § 101933 Term of Commercial Services Contracts
- § 101934 Capital Improvements
- § 101935 Financial Management
- § 101936 Regulations
- § 101937 Savings provision
- § 101938 Sunset

§ 101931- Contract authority

(a) General authority.--Notwithstanding subchapter II, the Secretary may award and administer commercial services contracts (and related professional services contracts) for the operation and expansion of commercial visitor facilities and visitor services programs in System units. The commercial services contracts that may be awarded shall be limited to those that are necessary and appropriate for public use and enjoyment of the unit of the System in which they are located, and, that are consistent with the preservation and conservation of the resources and values of the unit.

(b) Additional authority.--Contracts may be awarded under subsection (a) without regard to Federal laws and regulations governing procurement by Federal agencies, with the exception of laws and regulations related to Federal government contracts governing working conditions and wage rates, including the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), sections 3141-3144, 3146, and 3147 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), and any civil rights provisions otherwise applicable thereto.

(c) Use of commercial services contracts.—

(1) In general.--The Secretary may issue a commercial services contract under this subchapter when the Secretary determines that the contract meets the objectives of expanding, modernizing, and improving the condition of commercial visitor facilities and the services provided to visitors.

(2) Exceptions.--No contracts may be awarded under this subchapter—

(A) for the provision of outfitter and guide services described in section 101913(8); or

(B) to authorize the provision of facilities or services for which the Secretary has granted to an existing concessioner a preferential right of renewal as defined in sections 101911 and 101913.

§ 101932- Award of Commercial Services Contracts

(a) Competitive selection process.--Except as provided in subsection (c), commercial services contracts shall be awarded by the Secretary through a competitive selection process.

(b) Solicitation of proposals.--Before awarding a new commercial services contract, the Secretary shall publicly solicit proposals for the contract, except as provided in subsection (c). In connection with such solicitation, the Secretary shall prepare a request for proposals and shall publish notice of its availability.

§ 101933- Term of Commercial Services Contracts

A commercial services contract entered into pursuant to this title shall be awarded for a term not to exceed 10 years.

§ 101934- Capital Improvements

A person or entity awarded a contract under this subchapter shall receive no leasehold surrender interest, as defined in section 101915, in capital improvements constructed under the terms of the contract.

§ 101935- Financial Management

(a) Revolving fund.--There is established a revolving fund that shall be available to the Secretary without fiscal year limitation for—

- (1) expenses necessary for the management, improvement, enhancement, operation, construction, and maintenance of commercial visitor services and facilities; and
- (2) payment of possessory interest and leasehold surrender interest.

(b) Collection of funds.—

- (1) Funds collected by the Secretary pursuant to the contracts awarded under this subchapter shall be credited to the revolving fund.
- (2) The Secretary is authorized to transfer to the revolving fund, without reimbursement, any additional funds or revenue in connection with the functions to be carried out under this subchapter.

(c) Use of funds.--Amounts in the revolving fund shall be used by the Secretary in furtherance of the purposes of this title. No funds from this account may be used to decrease the availability of services and programs to the public.

§ 101936- Regulations

As soon as practicable after the effective date of this subchapter, the Secretary shall promulgate regulations appropriate for its implementation.^[3]

³ As of January 2019, NPS had not promulgated any regulations to implement the VEIA.

§ 101937- Savings Provision

Nothing in this subchapter shall modify the terms or conditions of any concessions contracts awarded under subchapter II or the ability of the National Park Service to enter into concessions contracts under the National Park Service Concessions Management Improvement Act of 1998 (title IV of Public Law 105-391) including the use of leaseholder surrender interest.

§ 101938- Sunset

The authority given to the Secretary under this subchapter shall expire 7 years after the date of the enactment of this subchapter.

3. The concession regulations: 36 C.F.R. Part 51

Introduction

The regulations set out at 36 C.F.R. Part 51 implement the provisions of the National Park Service Concessions Management Improvement Act of 1998. Unlike the 1998 Act which was created by Congress, the regulations were created by NPS (and can be modified by NPS). While the regulations are secondary to the 1998 Act itself, they nonetheless are legally binding as a matter of law and NPS must comply with them.

Most government contracts are subject to the Federal Acquisition Regulations (FAR) which apply to the government's efforts to procure goods and services. However, because NPS concession contracts are viewed by NPS and the courts as not involving a procurement of a good or service, they are one of the few categories of federal government contracts not covered by the FAR.⁴

36 C.F.R. Part 51

General Policy

- § 51.1 What does this part cover?
- § 51.2 What is the policy underlying concessions contracts?

Definitions

- § 51.3 How are terms defined in this part?

Concessioner Selection Process

- § 51.4 How will the Director invite the general public to apply for the award of a concession contract?
- § 51.5 What information will the prospectus include?
- § 51.6 Will a concession contract be developed for a particular potential offeror?
- § 51.7 How will information be provided to a potential offeror after the prospectus is issued?

⁴ Notably, the Government Accountability Office (GAO) has held that certain types of NPS concession contracts which involve a minimum level of maintenance of government-owned structures are in fact procurement contracts. *See Matter of Starfleet Marine Transportation, Inc.*, B-290181, 2002 CPD ¶ 113 (2002). As discussed below, GAO's differing view does not impact the rules which cover NPS concessioners operations, but does allow give concessioners an opportunity to challenge certain award decisions at the GAO.

- § 51.8 Where will the Director publish the notice of availability of the prospectus?
- § 51.9 How do I get a copy of the prospectus?
- § 51.10 How long will I have to submit my proposal?
- § 51.11 May the Director amend, extend, or cancel a prospectus of solicitation?
- § 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?
- § 51.13 When will the Director determine if proposals are responsive?
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- § 51.15 May I clarify, amend or supplement my proposal after it is submitted?
- § 51.16 How will the Director evaluate proposals and select the best one?
- § 51.17 What are the selection factors?
- § 51.18 When must the Director reject a proposal?
- § 51.19 Must the Director award the concession contract that is set forth in the prospectus?
- § 51.20 Does this part limit the authority of the Director?
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- § 51.23 May the Director extend an existing concession contract without a public solicitation?
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- § 51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

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- § 51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?
- § 51.28 When will the Director determine whether a concessioner is a preferred offeror?
- § 51.29 How will I know when a preferred offeror exists?
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- § 51.31 What happens if a preferred offeror does not submit a responsive proposal?

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- § 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?
- § 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?
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- § 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?
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- § 51.39 What are some examples of outfitter and guide concession contracts?
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- § 51.42 Are there exceptions to this compensable interest prohibition?
- § 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?
- § 51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?
- § 51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?
- § 51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?
- § 51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?
- § 51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?
- § 51.49 May the Director grant a right of preference except in accordance with this part?
- § 51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

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- § 51.51 What special terms must I know to understand leasehold surrender interest?
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- § 51.54 What must a concessioner do before beginning to construct a capital improvement?
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- § 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?
- § 51.69 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?
- § 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?
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- § 51.73 What is the term of a concession contract?

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Preferential or Exclusive Rights to Provide Services In An Area

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- § 51.98 What records must the concessioner keep and what access does the Director have to records?
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- § 51.100 When will the Director make proposals and evaluation documents publicly available?

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- § 51.101 Did the 1998 Act repeal the 1965 Act?
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- § 51.103 Severability
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§ 51.1 What does this part cover?

This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 et seq. and Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105–391). The purpose of concession contracts is to authorize persons (concessioners) to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part. In accordance with section 403 of the 1998 Act, the Director will utilize concession contracts to authorize the provision of visitor services in park areas, except as may otherwise be authorized by law. For example, the Director may enter into commercial use authorizations under section 418 of the 1998 Act and may enter into agreements with non-profit organizations for the sale of interpretive materials and conduct of interpretive programs for a fee or charge in park areas. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize a non-profit organization to provide incidental visitor services that are necessary for the conduct of the interpretive program. Nothing in this part amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) relating to revenue-producing visitor services.

§ 51.2 What is the policy underlying concessions contracts?

It is the policy of the Congress and the Secretary that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

§ 51.3 How are terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

The **1965 Act** means Public Law 89–249, commonly known as the National Park Service Concession Policies Act of 1965.

A **1965 Act concession contract** is a concession contract or permit entered into under the authority of the 1965 Act.

The **1998 Act** means Title IV of Public Law 105–391.

The **award** of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

A **concession contract** (or contract) means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions. Concession contracts are not contracts within the meaning of 41 U.S.C. 601 et seq. (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions. Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

A **concessioner** is an individual, corporation, or other legally recognized entity that duly holds a concession contract.

Director means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part. In circumstances where this part calls for an appeal to the Director, the appeal shall be considered by an official of higher authority than the official that made the disputed decision.

A **franchise fee** is the consideration paid to the Director by a concessioner for the privileges granted by a concession contract.

Offeror means an individual, corporation, or other legally recognized entity, including an existing concessioner, that submits a proposal for a concession contract. If the entity that is to be the concessioner is not formally in existence as of the time of submission of a proposal, a proposal must demonstrate that the individuals or organizations that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in this part. In addition, if the entity that will be the concessioner is not established at the time of submission of a proposal, the proposal must contain assurances satisfactory to the Director that the entity that will be the concessioner will be a qualified person as of the date of the award of the contract and otherwise have the ability to carry out the commitments made in the proposal.

Possessory interest means an interest in real property improvements as defined by the 1965 Act obtained by a concessioner under a possessory interest concession contract. Possessory interest, for the purposes of this part, does not include any interest in property in which no possessory interest, as defined by the 1965 Act, exists.

A **possessory interest** concession contract means a 1965 Act concession contract that provides the concessioner a possessory interest.

A **preferred offeror** is a concessioner that the Director determines is eligible to exercise a right of preference to the award of a qualified concession contract in accordance with this part.

A **qualified concession contract** is a new concession contract that the Director determines to be a qualified concession contract for right of preference purposes.

A **qualified person** is an individual, corporation or other legally recognized entity that the Director determines has the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and financial ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public.

A **responsive proposal** means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the proposed concession contract and prospectus and as having provided the information required by the prospectus.

A **right of preference** is the preferential right of renewal set forth in Section 403(7)(C) of the 1998 Act which requires the Director to allow a preferred offeror the opportunity to match the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a qualified concession contract. A right of preference does not provide any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may apply.

Visitor services means accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (e.g., when a lodging concessioner may provide free transportation services to guests). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

§ 51.4 How will the Director invite the general public to apply for the award of a concession contract?

(a) The Director must award all concession contracts, except as otherwise expressly provided in this part, through a public solicitation process. The public solicitation process begins with the issuance of a prospectus. The prospectus will invite the general public to submit proposals for the contract. The prospectus will describe the terms and conditions of the concession contract to be awarded and the procedures to be followed in the selection of the best proposal.

(b) Except as provided under § 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded. The Director will not issue a prospectus for a concession contract earlier than eighteen months prior to the expiration of a related existing concession contract.

§ 51.5 What information will the prospectus include?

The prospectus must include the following information:

(a) The minimum requirements of the concession contract. The minimum requirements of the concession contract, include, but are not limited to the following:

- (1) The minimum acceptable franchise fee or other forms of consideration to the Government;
- (2) The minimum visitor services that the concessioner is to be authorized to provide;
- (3) The minimum capital investment, if any, that the concessioner must make;
- (4) The minimum measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area; and
- (5) Any other minimum requirements that the new contract may specify, including, as appropriate and without limitation, measurable performance standards;

(b) The terms and conditions of a current concession contract, if any, relating to the visitor services to be provided, including all fees and other forms of compensation provided to the Director under such contract;

(c) A description of facilities and services, if any, that the Director may provide to the concessioner under the terms of the concession contract, including, but not limited to, public access, utilities and buildings;

(d) An estimate of the amount of any compensation due a current concessioner from a new concessioner under the terms of an existing or prior concession contract;

(e) A statement identifying each principal selection factor for proposals, including subfactors, if any, and secondary factors, if any, and the weight and relative importance of the principal and any secondary factors in the selection decision;

(f) Such other information related to the proposed concession contract as is provided to the Director pursuant to a concession contract or is otherwise available to the Director, as the Director determines is necessary to allow for the submission of competitive

proposals. Among other such necessary information a prospectus will contain (when applicable) are the gross receipts of the current concession contract broken out by department for the three most recent years; franchise fees charged under the current concession contract for the three most recent years; merchandise inventories of the current concessioner for the three most recent years; and the depreciable fixed assets and net depreciable fixed assets of the current concessioner; and

(g) Identification of a preferred offeror for a qualified concession contract, if any, and, if a preferred offeror exists, a description of a right of preference to the award of the concession contract.

§ 51.6 Will a concession contract be developed for a particular potential offeror?

The terms and conditions of a concession contract must represent the requirements of the Director in accordance with the purposes of this part and must not be developed to accommodate the capabilities or limitations of any potential offeror. The Director must not provide a current concessioner or other person any information as to the content of a proposed or issued prospectus that is not available to the general public.

§ 51.7 How will information be provided to a potential offeror after the prospectus is issued?

Material information directly related to the prospectus and the concession contract (except when otherwise publicly available) that the Director provides to any potential offeror prior to the submission of proposals must be made available to all persons who have requested a copy of the prospectus.

§ 51.8 Where will the Director publish the notice of availability of the prospectus?

The Director will publish notice of the availability of the prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The Director may also publish notices, if determined appropriate by the Director, electronically or in local or national newspapers or trade magazines.

§ 51.9 How do I get a copy of the prospectus?

The Director will make the prospectus available upon request to all interested persons. The Director may charge a reasonable fee for a prospectus, not to exceed printing, binding and mailing costs.

§ 51.10 How long will I have to submit my proposal?

The Director will allow an appropriate period for submission of proposals that is not less than 60 days unless the Director determines that a shorter time is appropriate in the circumstances of a particular solicitation. Proposals that are not timely submitted will not be considered by the Director.

§ 51.11 May the Director amend, extend, or cancel a prospectus of solicitation?

The Director may amend a prospectus or extend the submission date, or both, prior to and on the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled, or resolicited solicitation for a concession contract.

§ 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?

The Director may specify in a prospectus additional solicitation and/or selection procedures consistent with the requirements of this part in the interest of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus—a qualifications phase and a proposal phase. The Director will incorporate simplified administrative requirements and procedures in prospectuses for concession contracts that the Director considers are likely to be awarded to a sole proprietorship or are likely to have annual gross receipts of less than \$100,000. Such simplified requirements and procedures may include, as appropriate and without limitation, a reduced application package, a shorter proposal submission period, and a reduction of proposal information requirements.

§ 51.13 When will the Director determine if proposals are responsive?

The Director will determine if proposals are responsive or non-responsive prior to or as of the date of selection of the best proposal.

§ 51.14 What happens if no responsive proposals are submitted?

If no responsive proposals are submitted, the Director may cancel the solicitation, or, after cancellation, establish new contract requirements and issue a new prospectus.

§ 51.15 May I clarify, amend or supplement my proposal after it is submitted?

(a) The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

(b) A proposal may suggest changes to the terms and conditions of a proposed concession contract and still be considered as responsive so long as the suggested changes are not conditions to acceptance of the terms and conditions of the proposed concession contract. The fact that a proposal may suggest changes to the proposed concession contract does not mean that the Director may accept those changes without a resolicitation of the concession opportunity.

§ 51.16 How will the Director evaluate proposals and select the best one?

(a) The Director will apply the selection factors set forth in § 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in § 51.17(b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

(b) The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

(c) The responsive proposal with the highest cumulative point score will be selected by the Director as the best proposal. If two or more responsive proposals receive the same highest point score, the Director will select as the best proposal (from among the responsive proposals with the same highest point score), the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall basis, best achieve the purposes of this part.

Consideration of revenue to the United States in this determination and in scoring proposals under principal selection factor five will be subordinate to the objectives of protecting, conserving, and preserving the resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

§ 51.17 What are the selection factors?

(a) The five principal selection factors are:

- (1) The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;
- (2) The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;
- (3) The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;
- (4) The financial capability of the offeror to carry out its proposal; and
- (5) The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

(b) The secondary selection factors are:

- (1) The quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. A prospectus may exclude this secondary factor if the prospectus solicits proposals for a concession contract that is anticipated to have annual gross receipts of less than \$100,000 and the activities that will be conducted under the contract are determined by the Director as likely to have only limited impacts on the resources of the park area; and
- (2) Any other selection factors the Director may adopt in furtherance of the purposes of this part, including where appropriate and otherwise permitted by law, the extent to

which a proposal calls for the employment of Indians (including Native Alaskans) and/or involvement of businesses owned by Indians, Indian tribes, Native Alaskans, or minority or women-owned businesses in operations under the proposed concession contract.

(c) A prospectus may include subfactors under each of the principal and secondary factors to describe specific elements of the selection factor.

§ 51.18 When must the Director reject a proposal?

The Director must reject any proposal received, regardless of the franchise fee offered, if the Director makes any of the following determinations: the offeror is not a qualified person as defined in this part; The offeror is not likely to provide satisfactory service; the proposal is not a responsive proposal as defined in this part; or, the proposal is not responsive to the objectives of protecting and preserving the resources of the park area and of providing necessary and appropriate services to the public at reasonable rates.

§ 51.19 Must the Director award the concession contract that is set forth in the prospectus?

Except for incorporating into the concession contract appropriate elements of the best proposal, the Director must not award a concession contract which materially amends or does not incorporate the terms and conditions of the concession contract as set forth in the prospectus.

§ 51.20 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms.

§ 51.21 When must the selected offeror execute the concession contract?

The selected offeror must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession contract in this period, the Director may select another responsive proposal or may cancel the selection and resolicit the concession contract.

§ 51.22 When may the Director award the concession contract?

Before awarding a concession contract with anticipated annual gross receipts in excess of \$5,000,000 or of more than 10 years in duration, the Director must submit the concession contract to the Committee on Natural Resources of the House of Representatives and the

Committee on Energy and Natural Resources of the Senate. The Director must not award any such concession contract until 60 days after the submission. Award of these contracts may not be made without the Director's written approval. The Director may not delegate this approval except to a Deputy Director or an Associate Director. The Director may award a concession contract that is not subject to these or other special award requirements at any time after selection of the best proposal and execution of the concession contract by the offeror.

§ 51.23 May the Director extend an existing concession contract without a public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively an extension or extensions of an existing concession contract to the current concessioner for additional terms not to exceed three years in the aggregate, e.g., the Director may award one extension with a three year term, two consecutive extensions, one with a two year term and one with a one year term, or three consecutive extensions with a term of one year each. The Director may award such extensions only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before determining to award such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the Federal Register of the proposed extension at least 30 days in advance of the award of the extension (except in emergency situations).

§ 51.24 May the Director award a temporary concession contract without a public solicitation?

(a) Notwithstanding the public solicitation requirements of this part, the Director may non-competitively award a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate--e.g., the Director may award one temporary contract with a three year term; two consecutive temporary contracts, one with a two year term and one with a one year term; or three consecutive temporary contracts with a term of one year each--to any qualified person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the Federal Register of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may be awarded to continue visitor services that were provided under an extended concession contract pursuant to the terms and conditions in this paragraph. A temporary concession contract awarded under the

authority of the prior sentence will be considered as a contract extension for purposes of determining the existence of a preferred offeror under § 51.44.

(b) [Reserved]

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract that replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under an extended concession contract that was replaced by a temporary concession contract under paragraph (a) of this section.

§ 51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award a concession contract non-competitively to any qualified person if the Director determines both that such an award is otherwise consistent with the requirements of this part and that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest. Indisputable equitable considerations must be the determinant of such circumstances. The Director must publish a notice of his intention to award a concession contract to a specified person under these circumstances and the reasons for the proposed award in the Federal Register at least 60 days before the concession contract is awarded. In addition, the Director also must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives at least 60 days before the contract is awarded. The Director must personally approve any such award and may only do so with the prior written approval of the Secretary.

§ 51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?

The solicitation, selection and award procedures described in this part will apply to the solicitation, selection and award of contracts for which a preferred offeror exists, except as modified by this subpart, subpart F and other sections of this part related to preferred offerors and/or a right of preference.

§ 51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?

(a) A preferred offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with this part.

(b) A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match in accordance with the requirements of this part the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal.

§ 51.28 When will the Director determine whether a concessioner is a preferred offeror?

Subject to §§ 51.46 and 51.47, the Director will determine whether a concessioner is a preferred offeror in accordance with this part no later than the date of issuance of a prospectus for the applicable new concession contract.

§ 51.29 How will I know when a preferred offeror exists?

If the Director has determined that a preferred offeror exists for a qualified concession contract under this part, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's right of preference.

§ 51.30 What must a preferred offeror do before it may exercise a right of preference?

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus for a qualified concession contract if the preferred offeror wishes to exercise a right of preference.

§ 51.31 What happens if a preferred offeror does not submit a responsive proposal?

If a preferred offeror fails to submit a responsive proposal, the offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

§ 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?

If the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions, subject to other applicable requirements of this part.

§ 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will select for award of the contract the offeror that submitted the best responsive proposal.

§ 51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best responsive proposal, or will cancel the solicitation and may resolicit the concession contract but only without recognition of a preferred offeror or right of preference.

§ 51.35 What happens to a right of preference if the Director receives no responsive proposals?

If the Director receives no responsive proposals, including a responsive proposal from a preferred offeror, in response to a prospectus for a qualified concession contract for which a preferred offeror exists, the Director must cancel the solicitation and may resolicit the concession contract or take other appropriate action in accordance with this part. No right of preference will apply to a concession contract resolicited under this section unless the contract is resolicited upon terms and conditions materially more favorable to offerors than those contained in the original contract.

§ 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?

A concessioner is a preferred offeror if the Director determines that the following conditions are met:

- (a) The concessioner was a satisfactory concessioner during the term of its concession contract as determined under this part;
- (b) The applicable new contract is a qualified concession contract as determined under this part; and
- (c) If applicable, the concessioner's previous concession contract was an outfitter and guide concession contract as determined under this part.

§ 51.37 How will the Director determine that a new concession contract is a qualified concession contract?

A new concession contract is a qualified concession contract if the Director determines that:

- (a) The new concession contract provides for the continuation of the visitor services authorized under a previous concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but, for purposes of a qualified concession contract, may not materially differ in nature and type from those authorized under the previous concession contract; and either
- (b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than \$500,000 in the first 12 months of its term; or
- (c) The new concession contract is an outfitter and guide concession contract as described in this part.

§ 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

(a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and

(b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the activity and to provide a safe and enjoyable experience for these visitors.

§ 51.39 What are some examples of outfitter and guide concession contracts?

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

§ 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area's particular geographic circumstances. Factors that generally may indicate that outfitter and guide operations are conducted in the backcountry of a park area include, without limitation, the fact that:

- (a) The operations occur in areas remote from roads and developed areas;
- (b) The operations are conducted within a designated natural area of a park area;
- (c) The operations occur in areas where search and rescue support is not readily available; and
- (d) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

§ 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area.

§ 51.42 Are there exceptions to this compensable interest prohibition?

Two exceptions to this compensable interest prohibition exist:

(a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and

(b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner's predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

§ 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?

Only a Deputy Director or an Associate Director will make the determination that a concession contract is or is not an outfitter and guide contract.

§ 51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?

To be a satisfactory concessioner for the purposes of a right of preference, the Director must determine that the concessioner operated satisfactorily on an overall basis during the term of its applicable concession contract, including extensions of the contract. The Director will base this determination in consideration of annual evaluations made by the Director of the concessioner's performance under the terms of the applicable concession contract and other relevant facts and circumstances. The Director must determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract if the annual evaluations of the concessioner made subsequent to May 17, 2000 are less than satisfactory for any two or more years of operation under the concession contract.

§ 51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?

The Director will determine that a concessioner has operated satisfactorily on an overall basis during the term of a concession contract only if the concessioner (including a new concessioner resulting from an assignment as described in this part, including, without limit, an assignment of a controlling interest in a concessioner as defined in this part) has or will have operated for more than two years under a concession contract with a term of more than five years or for one year under a concession contract with a term of five years or less. For purposes of this section, a new concessioner's first day of operation under an assigned concession contract (or as a new concessioner after approval of an assignment of a controlling interest in a concessioner) will be the day the Director approves the assignment pursuant to this part. If the Director determines that an assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to the requirements of this section.

§ 51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?

The Director may determine that a concessioner has not operated satisfactorily on an overall basis during the term of a current concession contract, and therefore is not a preferred offeror, after a prospectus for a new contract has been issued and prior to the selection of the best proposal submitted in response to a prospectus. In circumstances where the usual time of an annual evaluation of a concessioner's performance may not occur until after the selection of the best proposal submitted in response to a prospectus, the Director will make an annual performance evaluation based on a shortened operations period prior to the selection of the best proposal. Such shorter operations period, however, must encompass at least 6 months of operations from the previous annual performance evaluation. In the event the concessioner receives a second less than satisfactory annual evaluation (including, without limitation, one based on a shortened operations period), the prospectus must be amended to delete a right of preference or canceled and reissued without recognition of a right of preference to the new concession contract.

§ 51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?

(a) Except as stated in paragraph (b) of this section, any person may appeal to the Director a determination that a concessioner is or is not a preferred offeror for the purposes of a right of preference in renewal, including, without limitation, whether the applicable new concession contract is or is not a qualified concession contract as described in this part. This appeal must specify the grounds for the appeal and be received by the Director in writing no later than 30

days after the date of the determination. If applicable, the Director may extend the submission date for an appeal under this section upon request by the concessioner if the Director determines that good cause for an extension exists.

(b) The appeal provided by this section will not apply to determinations that a concessioner is not a preferred offeror as a consequence of two or more less than satisfactory annual evaluations as described in this part as the concessioner is given an opportunity to appeal those evaluations after they are made in accordance with applicable administrative guidelines.

(c) The Director must consider an appeal under this section personally or must authorize a Deputy Director or Associate Director to consider the appeal. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal, other written information available, and the requirements of this part. The written decision on the appeal must be issued by the date of selection of the best proposal submitted in response to a prospectus. If the appeal results in a concessioner being determined a preferred offeror, then the concessioner will have a right of preference to the qualified concession contract as described in and subject to the conditions of this part, including, but not limited to, the obligation to submit a responsive proposal pursuant to the terms of the related prospectus. If the appeal results in a determination that a concessioner is not a preferred offeror, no right of preference will apply to the award of the related concession contract and the award will be made in accordance with the requirements of this part.

(d) No person will be considered as having exhausted administrative remedies with respect to a determination by the Director that a concessioner is or is not a preferred offeror until the Director issues a written decision in response to an appeal submitted pursuant to this section, or, where applicable, pursuant to an appeal provided by the administrative guidelines described in paragraph (b) of this section. The decision of the Director is final agency action.

§ 51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?

Nothing in this part will limit the right of the Director to terminate a concession contract pursuant to its terms at any time for less than satisfactory performance or otherwise. If a concession contract is terminated for less than satisfactory performance or other breach, the terminated concessioner, even if otherwise qualified, will not be eligible to be a preferred offeror. The fact that the Director may not have terminated a concession contract for less than satisfactory performance or other breach will not limit the authority of the Director to determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract.

§ 51.49 May the Director grant a right of preference except in accordance with this part?

The Director may not grant a concessioner or any other person a right of preference or any other form of entitlement of any nature to a new concession contract, except in accordance with this part or in accordance with 36 CFR part 13.

§ 51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

The existence of a preferred offeror does not limit the authority of the Director to establish, in accordance with this part, the terms and conditions of a new concession contract, including, but not limited to, terms and conditions that modify the terms and conditions of a prior concession contract.

§ 51.51 What special terms must I know to understand leasehold surrender interest?

To understand leasehold surrender interest, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

Arbitration means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this subpart or subpart H of this part will utilize the following procedures unless otherwise agreed by the concessioner and the Director. One member of the arbitration panel will be selected by the concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Adjudicative procedures are not encouraged but may be adopted by the panel if determined necessary in the circumstances of the dispute. Determinations must be made by a majority of the members of the panel and will be binding on the concessioner and the Director.

A **capital improvement** is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract and located on lands of the United States within a park area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this part. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the

nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

Construction cost of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principals (GAAP). The term “construct” or “construction” as used in this part also means “install” or “installation” of fixtures where applicable.

Consumer Price Index means the national “Consumer Price Index--All Urban Consumers” published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

Depreciation means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

Eligible direct costs means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor’s shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor’s (and subcontractor’s) profit and overhead (including job supervision, worker’s compensation insurance and fire, liability, and unemployment insurance).

Eligible indirect costs means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the concessioner are not eligible indirect costs.

Fixtures and non-removable equipment are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) constructed by a concessioner pursuant to the terms of a leasehold surrender interest concession contract are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in this part, the term “fixture” as used in this part includes the term “non-removable equipment.”

Leasehold surrender interest solely means a right to payment in accordance with this part for related capital improvements that a concessioner makes or provides within a park area on lands owned by the United States pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

Leasehold surrender interest concession contract means a concession contract that provides for leasehold surrender interest in capital improvements.

Leasehold surrender interest value means the amount of compensation a concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract under the authority of section 405(a)(4) of the 1998 Act, leasehold surrender interest value in existing capital improvements is an amount equal to:

- (1) The initial construction cost of the related capital improvement;
- (2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;
- (3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract, or, if applicable, the date on which a concessioner ceases to utilize

a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

Major rehabilitation means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

Pre-rehabilitation value of an existing structure means the replacement cost of the structure less depreciation.

Real property improvements means real property other than land, including, but not limited to, capital improvements.

Related capital improvement or **related fixture** means a capital improvement in which a concessioner has a leasehold surrender interest.

Replacement cost means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

Structure means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

Substantial completion of a capital improvement means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

§ 51.52 How do I obtain a leasehold surrender interest?

Leasehold surrender interest concession contracts will contain appropriate leasehold surrender interest terms and conditions consistent with this part. A concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with this part and the leasehold surrender interest terms and conditions of an applicable leasehold surrender interest concession contract.

§ 51.53 When may the Director authorize the construction of a capital improvement?

The Director may only authorize or require a concessioner to construct capital improvements on park lands in accordance with this part and under the terms and conditions of a leasehold surrender interest concession contract for the conduct by the concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

§ 51.54 What must a concessioner do before beginning to construct a capital improvement?

Before beginning to construct any capital improvement, the concessioner must obtain written approval from the Director in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this part. (The approval requirements of this and other sections of this part also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this part.)

§ 51.55 What must a concessioner do after substantial completion of the capital improvement?

Upon substantial completion of the construction of a capital improvement in which the concessioner is to obtain a leasehold surrender interest, the concessioner must provide the Director a detailed construction report. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs

as defined in this part. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

§ 51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?

After receiving the detailed construction report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the Director will be the final determination of construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the concessioner requests arbitration of the construction cost under § 51.57. The Director may at any time review a construction cost determination (subject to arbitration under § 51.57) if the Director has reason to believe that it was based on false, misleading or incomplete information.

§ 51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?

If a concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under § 51.56. The arbitration procedures are described in § 51.51. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

§ 51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?

The concessioner:

- (a) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;
- (b) Where applicable, must transfer in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and
- (c) May relinquish or waive a leasehold surrender interest.

§ 51.59 Will a leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?

A leasehold surrender interest may not be extinguished by the expiration or termination of a concession contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to this part will constitute the payment of just compensation for leasehold surrender interest within the meaning of this part and for all other purposes.

§ 51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?

When a concessioner under a leasehold surrender interest concession contract is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the concessioner's leasehold surrender interest value (established as of the date of expiration or termination of its prior concession contract) in the related capital improvements will be continued as the initial value (instead of initial construction cost) of the concessioner's leasehold surrender interest under the terms of the new concession contract. No compensation will be due the concessioner for its leasehold surrender interest or otherwise in these circumstances except as provided by this part.

§ 51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

(a) When a concessioner is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, or, the concessioner, prior to such termination or expiration, ceases to utilize under the terms of a concession contract capital improvements in which the concessioner has a leasehold surrender interest, the concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of the leasehold surrender interest contract, or the date the concessioner ceases to utilize related capital improvements under the terms of a concession contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of the concession contract, or, if applicable, the date the concessioner ceases to utilize the capital improvements under the terms of a concession contract.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration

or termination of the leasehold surrender interest concession contract, or, as of the date a concessioner ceases to utilize related capital improvements under the terms of a concession contract, the payment when made will include interest on the amount that was due on the date of expiration or termination of the concession contract or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of the concession contract or the cessation of use of related capital improvements under the terms of a concession contract.

§ 51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?

Leasehold surrender interest concession contracts must contain provisions under which the Director and the concessioner will seek to agree in advance of the expiration or other termination of the concession contract as to what the concessioner's leasehold surrender interest value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. In the event that agreement cannot be reached, the provisions of the leasehold surrender interest concession contract must provide for the Director to make a final determination of leasehold surrender interest value unless binding arbitration as to the value is requested by the concessioner. The arbitration procedures are described in § 51.51. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this part are final and not subject to further arbitration.

§ 51.63 When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

A new leasehold surrender interest concession contract awarded to a new concessioner will require the new concessioner to pay the prior concessioner its leasehold surrender interest value in existing capital improvements as determined under § 51.62. The new concessioner upon payment will have a leasehold surrender interest in the related capital improvements on a unit-by-unit basis under the terms of the new leasehold surrender interest contract. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessioner was required to pay the prior concessioner.

§ 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?

A concessioner that, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the concessioner has a leasehold surrender interest, will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this part.

§ 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?

A concessioner that replaces an existing fixture in which the concessioner has a leasehold surrender interest with a new fixture will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

§ 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?

(a) A concession contract may require the concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the concessioner). A leasehold surrender interest will be obtained by the concessioner in such fixtures subject to the approval and determination of construction cost and other conditions contained in this part.

(b) A concession contract may require the concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the concessioner). Upon substantial completion of the major rehabilitation, the concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

§ 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

A concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

§ 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?

A concessioner that has possessory interest in real property improvements pursuant to the terms of a 1965 Act concession contract, will, if the prior concessioner does not seek or is not awarded a new concession contract upon expiration or other termination of its 1965 Act concession contract, be entitled to receive compensation for its possessory interest in the amount and manner described by the possessory interest concession contract. The concessioner shall also be entitled to receive all other compensation, including any compensation for property in which there is no possessory interest, to the extent and in the manner that the possessory interest contract may provide.

§ 51.69 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?

In case of a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner will not agree on the value of a prior concessioner's possessory interest without the prior written approval of the Director unless the value is determined through the binding determination process required by the possessory interest concession contract. The Director's written approval is to ensure that the value is consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a binding process to resolve a dispute as to the value of the prior concessioner's possessory interest, the new concessioner must allow the Director to assist the new concessioner in the dispute process to the extent requested by the Director. Nothing in this section may be construed as limiting the rights of the prior concessioner to be paid for its possessory interest or other property by a new concessioner in accordance with the terms of its concession contract.

§ 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?

In the event a concessioner under a 1965 Act concession contract is awarded a new concession contract replacing a possessory interest concession contract, the concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. The concessioner will carry over as the initial value of such leasehold surrender interest (instead of initial construction cost) an amount equal to the value of its possessory interest in real property improvements as of the expiration or other termination of its possessory interest contract. This leasehold surrender interest will apply to the concessioner's possessory interest in real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that the concessioner had a possessory interest in only a portion of a structure, depreciation for purposes of leasehold surrender interest value under the new concession contract will apply only to the portion of the structure to which the possessory interest applied. The concessioner and the Director will seek to agree on an allocation of the leasehold surrender interest value on a unit by unit basis.

§ 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?

Unless other procedures are agreed to by the concessioner and the Director, in the event that a concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the concessioner and the Director as to the value of such possessory interest, or, a dispute as to the allocation of an established overall possessory interest value on a unit by unit basis, the value and/or allocation will be established by arbitration in accordance with the terms and conditions of this part. The arbitration procedures are described in § 51.51.

§ 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

If a new concessioner is awarded a leasehold surrender interest concession contract and is required to pay a prior concessioner for possessory interest in real property improvements, the new concessioner will have a leasehold surrender interest in the real property improvements under the terms of its new concession contract. The initial value of the leasehold surrender interest (instead of initial construction cost) will be the value of the possessory interest as of the expiration or other termination of the 1965 Act possessory interest concession contract. This leasehold surrender interest will apply even if the related possessory interest real property improvements are not capital improvements as defined in this part. In the event a new

concessioner obtains a leasehold surrender interest in only a portion of a structure as a result of the acquisition of a possessory interest from a prior concessioner, depreciation for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest was applied.

§ 51.73 What is the term of a concession contract?

A concession contract will generally be awarded for a term of 10 years or less unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. In no event will a concession contract have a term of more than 20 years (unless extended in accordance with this part).

§ 51.74 When may a concession contract be terminated by the Director?

Concession contracts will contain appropriate provisions for suspension of operations under a concession contract and for termination of a concession contract by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the 1998 Act. The purposes of the 1998 Act include, but are not limited to, protecting, conserving, and preserving park area resources and providing necessary and appropriate visitor services in park areas.

§ 51.75 May the Director segment or split concession contracts?

The Director may not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if the purpose of such action is to establish a concession contract with anticipated annual gross receipts of less than \$500,000.

§ 51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?

The Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services under the terms of a concession contract or otherwise. For the purpose of this section, a “preferential right to new or additional services” means a right of a concessioner to a preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concession contract may be amended to authorize the concessioner to provide minor additional visitor

services that are a reasonable extension of the existing services. A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

§ 51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?

Concession contracts will not provide in any manner an exclusive right to provide all or certain types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this part.

§ 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

(b) The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years will contain a provision that provides for adjustment of the contract's established franchise fee at the request of the concessioner or the Director. An adjustment will occur if the concessioner and the Director mutually determine that extraordinary, unanticipated changes occurred after the effective date of the contract that have affected or will significantly affect the probable value of the privileges granted by the contract. The concession contract will provide for arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee that reflects the extraordinary, unanticipated changes determined by the concessioner and the Director.

§ 51.79 May the Director waive payment of a franchise fee or other payments?

The Director may not waive the concessioner's payment of a franchise fee or other payments or consideration required by a concession contract, except that a franchise fee may be waived in part by the Director pursuant to administrative guidelines that may allow for a partial franchise fee waiver in recognition of exceptional performance by a concessioner under the terms of a concession contract. A concessioner will have no right to require the partial waiver of a franchise fee under this authority or under any related administrative guidelines.

§ 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?

If the Director awards more than one outfitter and guide concession contract that authorizes or requires the concessioners to provide the same or similar visitor services at the same approximate location or utilizing the same resource within a single park area, the Director will establish franchise fees for those concession contracts that are comparable. In establishing these comparable franchise fees, the Director will take into account, as appropriate, variations in the nature and type of visitor services authorized by particular concession contracts, including, but not limited to, length of the visitor experience, type of equipment utilized, relative expense levels, and other relevant factors. The terms and conditions of an existing concession contract will not be subject to modification or open to renegotiation by the Director because of the award of a new concession contract at the same approximate location or utilizing the same resource.

§ 51.81 May the Director include "special account" provisions in concession contracts?

(a) The Director may not include in concession contracts "special account" provisions, that is, contract provisions which require or authorize a concessioner to undertake with a specified percentage of the concessioner's gross receipts the construction of real property improvements, including, without limitation, capital improvements on park lands. The construction of capital improvements will be undertaken only pursuant to the leasehold surrender interest provisions of this part and the applicable concession contract.

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a repair and maintenance reserve to be used at the direction of the Director solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Repair and maintenance reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from the reserves will be

expended only for the repair and maintenance of real property improvements assigned to the concessioner by the Director for use in its operations.

(c) A concession contract must require the concessioner to maintain in good condition through a comprehensive repair and maintenance program all of the concessioner's personal property used in the performance of the concession contract and all real property improvements, including, without limitation, capital improvements, and, government personal property, assigned to the concessioner by a concession contract.

§ 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?

(a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director.

(b) Unless otherwise provided in a concession contract, the reasonableness of a concessioner's rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.

§ 51.83 Sale of Native Handicrafts.

(a) Where authorized by an applicable concession contract, concessioners are encouraged to sell authentic native handicrafts appropriately labeled or denoted as authentic that reflect the cultural, historical, and geographic characteristics of the related park area. To further this objective, concession contracts will contain a provision that exempts the revenue of a concessioner derived from the sale of appropriately labeled or denoted authentic native handicrafts from the concession contract's franchise fee.

(b) The sale of products as authentic native handicrafts is further regulated under the Indian Arts and Crafts Act, Public Law 101-644, as amended.

(c) Definitions.

(1) Alaska Native means any citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the

Metalakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any person so defined either or both of whose adoptive parents are not Alaska Natives. It also includes, in the absence of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Alaska native village or native groups of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaska Native by any village or group.

(2) Arts and crafts objects means art works and crafts that are in a traditional or non-traditional style or medium.

(3) Authentic native handicrafts means arts and crafts objects created by a United States Indian, Alaska Native, Native Samoan or Native Hawaiian that are made with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual object.

(4) Native Hawaiian means any individual who is a descendant of the aboriginal people that, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(5) United States Indian means any individual that is a member of an Indian tribe as defined in 18 U.S.C. 1159(c)(3).

§ 51.84 What special terms must I know to understand this part?

To understand this subpart specifically and this part in general you must refer to these definitions, applicable in the singular or plural, whenever the terms are used in this part.

A ***controlling interest in a concession contract*** means an interest, beneficial or otherwise, that permits the exercise of managerial authority over a concessioner's performance under the terms of the concession contract and/or decisions regarding the rights and liabilities of the concessioner.

A ***controlling interest in a concessioner*** means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits the exercise of managerial authority over the actions and operations of the concessioner. A "controlling interest" in a concessioner also means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities to permit the election of a majority of the Board of Directors of the concessioner. The term "controlling interest" in a concessioner, in the instance of a partnership, limited partnership, joint venture,

other business organization or individual entrepreneurship, means ownership or beneficial ownership of the assets of the concessioner that permits the exercise of managerial authority over the actions and operations of the concessioner.

Rights to operate and/or manage under a concession contract means any arrangement where the concessioner employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). This does not apply to arrangements with an individual employee.

Subconcessioner means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

§ 51.85 What assignments require the approval of the Director?

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (such transactions collectively referred to as “assignments” for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise;
- (c) Any controlling interest in a concessioner or concession contract; or
- (d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§ 51.86 What encumbrances require the approval of the Director?

The concessioner may not encumber, pledge, mortgage or otherwise provide as a security interest for any purpose (such transactions collectively referred to as “encumbrances” for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage performance under a concession contract as a subconcessioner or otherwise;

(c) Any controlling interest in a concessioner or concession contract; or

(d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§ 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?

No, approvals of assignments or encumbrances are subject to the following determinations by the Director:

(a) That the purpose of a leasehold surrender interest or possessory interest encumbrance is either to finance the construction of capital improvements under the applicable concession contract in the applicable park area or to finance the purchase of the applicable concession contract. An encumbrance of a leasehold surrender interest or possessory interest may not be made for any other purpose, including, but not limited to, providing collateral for other debt of a concessioner, the parent of a concessioner, or an entity related to a concessioner;

(b) That the encumbrance does not purport to provide the creditor or assignee any rights beyond those provided by the applicable concession contract, including, but not limited to, any rights to conduct business in a park area except in strict accordance with the terms and conditions of the applicable concession contract;

(c) That the encumbrance does not purport to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract or through a designated operator unless and until the Director determines that the proposed operator is a qualified person as defined in this part;

(d) That an assignment or encumbrance does not purport to assign or encumber assets that are not owned by the concessioner, including, without limitation, park area entrance, user day, or similar use allocations made by the Director;

(e) That the assignment is to a qualified person as defined in this part;

(f) That the assignment or encumbrance would not have an adverse impact on the protection, conservation or preservation of park resources;

(g) That the assignment or encumbrance would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(h) That the terms of the assignment or encumbrance are not likely, directly or indirectly, to reduce an existing or new concessioner's opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to affect adversely the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

§ 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, in a concession contract, or to operate or manage under a concession contract as a subconcessioner or otherwise, or to leasehold surrender interest or possessory interest, if acquired in violation of the requirements in this subpart.

§ 51.89 What happens if there is a default on an encumbrance approved by the Director?

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance, this part and the terms and conditions of the applicable concession contract.

§ 51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may be a controlling interest in a concessioner or a concession contract, the concessioner must apply in writing for approval of the transaction by the Director.

§ 51.91 What information may the Director require in the application?

An application for the Director's approval of an assignment or encumbrance will include, to the extent required by the Director in the circumstances of the transaction, the following information

in such detail as the Director may specify in order to make the determinations required by this subpart:

- (a) All instruments proposed to implement the transaction;
- (b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;
- (c) A narrative description of the proposed transaction;
- (d) A statement as to the existence and nature of any litigation relating to the proposed transaction;
- (e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;
- (f) A detailed description of all financial aspects of the proposed transaction;
- (g) Prospective financial statements (proformas);
- (h) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets; and
- (i) Such other information as the Director may require to make the determinations required by this subpart.

§ 51.92 What are standard proformas?

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A “standard proforma” is one that:

- (a) Provides projections, including revenues and expenses that are consistent with the concessioner’s past operating history unless the proforma is accompanied by a narrative that describes why differing expectations are achievable and realistic;
- (b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract unless the proforma contains a narrative description as to why an extended loan period is consistent with an opportunity for

reasonable profit over the remaining term of the concession contract. The narrative description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract; and

(c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract unless the proforma contains a narrative description as to why such extended amortization period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract.

§ 51.93 If the transaction includes more than one concession contract, how must required information be provided?

In circumstances of an assignment or encumbrance that includes more than one concession contract, the concessioner must provide the information described in this subpart on a contract by contract basis.

§ 51.94 What information will the Director consider when deciding to approve a transaction?

In deciding whether to approve an assignment or encumbrance, the Director will consider the proformas, all other information submitted by the concessioner, and other information available to the Director.

§ 51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?

In approving an assignment or encumbrance, the Director has no duty to inform any person of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract or the assignment or encumbrance. In addition, in approving an assignment or encumbrance, the Director makes no representations of any nature to any person about any matter, including, but not limited to, the value, allocation, or potential profitability of any concession contract or assets of a concessioner. No approval of an assignment or encumbrance may be construed as altering the terms and conditions of the applicable concession contract unless expressly so stated by the Director in writing.

§ 51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

The Director may not amend or extend a concession contract for the purpose of facilitating an assignment or encumbrance. The Director may not make commitments regarding rates to the

public, contract extensions, concession contract terms and conditions, or any other matter, for the purpose of facilitating an assignment or encumbrance.

§ 51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

The Director may not open to renegotiation or modify the terms and conditions of a concession contract as a condition to the approval of an assignment or encumbrance. The exception is if the Director determines that renegotiation or modification is required to avoid an adverse impact on the protection, conservation or preservation of the resources of a park area or an adverse impact on the provision of necessary and appropriate visitor services at reasonable rates and charges.

§ 51.98 What records must the concessioner keep and what access does the Director have to records?

A concessioner (and any subconcessioner) must keep any records that the Director may require for the term of the concession contract and for five calendar years after the termination or expiration of the concession contract to enable the Director to determine that all terms of the concession contract are or were faithfully performed. The Director and any duly authorized representative of the Director must, for the purpose of audit and examination, have access to all pertinent records, books, documents, and papers of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the concessioner).

§ 51.99 What access to concessioner records will the Comptroller General have?

The Comptroller General or any duly authorized representative of the Comptroller General must, until the expiration of five calendar years after the close of the business year of each concessioner (or subconcessioner), have access to and the right to examine all pertinent books, papers, documents and records of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by the parent or affiliate of the concessioner).

§ 51.100 When will the Director make proposals and evaluation documents publicly available?

In the interest of enhancing competition for concession contracts, the Director will not make publicly available proposals submitted in response to a prospectus or documents generated by the Director in evaluating such proposals, until the date that the new concession contract

solicited by the prospectus is awarded. At that time, the Director may or will make the proposals and documents publicly available in accordance with applicable law.

§ 51.101 Did the 1998 Act repeal the 1965 Act?

Section 415 of the 1998 Act repealed the 1965 Act and related laws as of November 13, 1998. This repeal did not affect the validity of any 1965 Act concession contract. The provisions of this part apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with terms and conditions of a 1965 Act concession contract.

§ 51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?

(a) Section 5 of the 1965 Act required the Secretary to give existing satisfactory concessioners a preference in the renewal (termed a "renewal preference" in the rest of this section) of its concession contract or permit. Section 415 of the 1998 Act repealed this statutory renewal preference as of November 13, 1998. It is the final decision of the Director, subject to the right of appeal set forth in paragraph (b) of this section, that holders of 1965 Act concession contracts are not entitled to be given a renewal preference with respect to such contracts (although they may otherwise qualify for a right of preference regarding such contracts under Sections 403(7) and (8) of the 1998 Act as implemented in this part). However, if a concessioner holds an existing 1965 Act concession contract and the contract makes express reference to a renewal preference, the concessioner may appeal to the Director for recognition of a renewal preference.

(b) Such appeal must be in writing and be received by the Director no later than thirty days after the issuance of a prospectus for a concession contract under this part for which the concessioner asserts a renewal preference. The Director must make a decision on the appeal prior to the proposal submission date specified in the prospectus. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. The Director may delegate consideration of such appeals only to a Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information.

(c) If the appeal results in a determination by the Director that the 1965 Act concession contract in question makes express reference to a renewal preference under section 5 of the 1965 Act, the 1998 Act's repeal of section 5 of the 1965 Act was inconsistent with the terms and conditions of the concession contract, and that the holder of the concession contract in these circumstances is entitled to a renewal preference by operation of law, the Director will permit the concessioner to exercise a renewal preference for the contract subject to and in accordance with the otherwise applicable right of preference terms and conditions of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable

prospectus. The Director, similarly, will permit any holder of a 1965 Act concession contract that a court of competent jurisdiction determines in a final order is entitled to a renewal preference, for any reason, to exercise a right of preference in accordance with the otherwise applicable requirements of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus.

§ 51.103 Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

§ 51.104 Has OMB approved the collection of information?

The Office of Management and Budget (OMB) reviewed and approved the information collection requirements contained in this Part and assigned OMB Control No. 1024-0029. We use this information to administer the National Park Service concessions program, including solicitation, award, and administration of concession contracts. A Federal agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, National Park Service, 1849 C Street NW., (2601), Washington, DC 20240.



4. The concession policies

4(a). Commercial Services Guide (2018)

NPS recently issued a comprehensive Commercial Services Guide (CS Guide), which addresses a significant number of matters pertaining to NPS concessioners. As NPS states in the CS Guide, it “provides detailed procedures to implement current laws, regulations, Executive Orders, Department of the Interior (DOI) policies and guidance, NPS Management Policies 2006, and other NPS policy and guidance related to commercial services.” The CS Guide addresses issues related to prospectus development, contract solicitation, selection and award, contract management, the concessioner review program, LSI management and franchise fees.

A copy of the CS Guide can be found at the following link:

<https://www.nps.gov/subjects/concessions/upload/CS-Guide-Final-Ver-3-FINAL-10-02-18.pdf>

4(b). NPS Management Policies (2006)

The NPS has issued management policies which provide “the foundational policies for management of the national park system,” including NPS’s concession operations. NPS’s management policies can be amended through Director’s Orders from time to time. NPS’s management policies which pertain specifically to NPS concession contracts are set forth in Chapter 10 of *NPS’s Management Policies (2006): A Guide to Managing the National Park System* (<http://www.nps.gov/policy/mp/policies.html>), a copy of which is set out below.

Generally speaking, NPS is not required as a matter of law to follow the provisions of its management policies.⁵ Therefore, in situations where the agency may not be acting consistent with these guidelines, a concessioner typically cannot force the agency to comply with these guidelines through a court action. However, because NPS recognizes that it should be conducting itself in a manner consistent with these provisions, it can be productive to point out to the agency that its actions are not in line with this published internal policy.⁶

Commercial Visitor Services

10.1 General

10.1.1 Leasing

10.2 Concessions

10.2.1 Concession Policies

10.2.2 Commercial Visitor Services Planning

10.2.3 Concession Contracting

10.2.3.1 Terms and Conditions of Contracts

10.2.3.2 Modifications/Amendments

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10.2.3.4 Competition

10.2.3.5 Third-party Agreements and Subconcessions

⁵ See *Southern Forest Watch, Inc. v. Jewell*, 3:13-cv-00116-TWP-HBG (March 30, 2015); *River Runners For Wilderness v. Martin*, 593 F. 3d 1064, 1071 (9th Cir. 2010); *Greater Yellowstone Coalition v. Kempthorne*, 577 F. Supp. 2d 183, 206 (D.C. Cir. 2008); *Wilderness Society v. Norton*, 434 F.3d 584, 595—97 (D.C. Cir. 2006); *Frazier v. US*, 79 Fed. Cl. 148, 164 (2007); *Lake Mohave Boat Owners Ass’n v. National Park Service*, 138 F.3d 759 (9th Cir. 1996).

⁶ See *Morton v. Ruiz*, 415 U.S. 199, 235, 94 S. Ct. 1055, 1074, 39 L.Ed.2d 270 (1974)(“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required”).

- 10.2.3.6 Multi-park Contracts
- 10.2.3.7 Termination
- 10.2.4 Concession Operations
 - 10.2.4.1 Operating Plans
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10.3.5 Duration

10.3.6 Other Contracts

10.1 General

Commercial visitor services will be authorized through concession contracts or commercial use authorizations, unless otherwise provided by law. Section 10.2 below addresses concession authorizations; section 10.3 addresses commercial use authorizations.

(See Leases 8.12. Also see Director's Orders #48A: Concession Management, and #48B: Commercial Use Authorizations)

10.1.1 Leasing

See Section 8.12

10.2 Concessions

10.2.1 Concession Policies

Concession operations are subject to the provisions of the National Park Service Concessions Management Improvement Act of 1998; NPS regulations published at 36 CFR Part 51; this chapter of NPS Management Policies; Director's Order #48A: Concession Management; and other specific guidance that may be issued under the Director's authority. In Alaska, concession operations are also subject to the provisions of the Alaska National Interest Lands Conservation Act and 36 CFR Part 13.

10.2.2 Commercial Visitor Services Planning

Commercial visitor services planning will identify the appropriate role of commercial operators in helping parks to provide opportunities for visitor use and enjoyment. This planning will be integrated into other plans and planning processes and will comply with all Service policies regarding planning and environmental analysis. The number, location, and sizes of facilities and sites assigned through concession authorizations will be the minimum necessary for proper and satisfactory operation of the facilities.

A park commercial services strategy must be in place to ensure that concession facilities and services are necessary and appropriate, financially viable, and addressed in an approved management plan. Commercial services plans may be developed to further implement a park's commercial services strategy and to guide decisions on whether to authorize or expand

concessions. A decision to authorize or expand a park concession will consider the effect on, or need for, additional infrastructure and management of operations and be based on a determination that the facility or service:

- is consistent with enabling legislation, and
- is complimentary to a park's mission and visitor service objectives, and
- is necessary and appropriate for the public use and enjoyment of the park in which it is located, and
- is not, and cannot be, provided outside park boundaries, and
- incorporates sustainable principles and practices in planning, design, siting, construction, and maintenance, and
- adopts appropriate energy and water conservation source reduction, and environmental purchasing standards and goals, and
- will not cause unacceptable impacts.

Prior to initiating new services authorized under a concession contract, a market and financial viability study/analysis will be completed to ensure the overall contract is feasible.

For information about leasing structures for appropriate uses, see section 8.12 and Director's Order #38: Real Property Leasing.
(See *Unacceptable Impacts 1.4.7.1*)

10.2.3 Concession Contracting

Approved standard contract language will be used in all NPS concession contracts. Any deviations from such language must be approved in writing by the Director.

10.2.3.1 Terms and Conditions of Contracts

Concession services will be authorized under concession contracts unless otherwise authorized by law. The term of a concession contract will generally be 10 years or less. However, the Director may award a contract for a term of up to 20 years if the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. In this regard, the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, the required construction of capital improvements, resource preservation and conservation, visitor needs, and other factors that the Director may deem appropriate. Proposed concession operations must be economically feasible and supported by a feasibility study prepared by a qualified individual.

10.2.3.2 Modifications/Amendments

Concession contracts may be modified only by written amendment. Amendments developed after the issuance of a concession contract must be consistent with current NPS policies and orders. Unless otherwise authorized by the contract, a concession contract may be amended to provide minor additional visitor services that are a reasonable extension of the existing services.

10.2.3.3 Extension

Concession contracts may be extended only in accordance with the requirements of 36 CFR Part 51, subpart D. The signature authority for contract extensions or amendments must be consistent with delegations of authority from the Director.

10.2.3.4 Competition

To obtain the best service provider and maximize benefits to the government, the National Park Service encourages competition in the awarding of concession contracts. Through outreach, the National Park Service also encourages the participation of American Indian, minority, and women-owned businesses when new business activities occur.

10.2.3.5 Third-party Agreements and Subconcessions

Unless specified in the contract, sub-concession or other third-party agreements (including management agreements) for the provision of visitor services that are required and/or authorized under concession contracts are not permitted. The Park Service may also advertise for a new concession contract to provide these additional services.

10.2.3.6 Multi-park Contracts

Concessioners operating in more than one park unit must have separate contracts for each park unit. When approved by the Director, an exception may be made in the case of those park units having common NPS management or where service is provided in contiguous park areas (for example, a pack trip that crosses the boundary of two adjoining parks, or where lack of opportunity for profit, geographic location, and type of service is not feasible within a single location).

10.2.3.7 Termination

The Service may terminate concession contracts for default and under any other circumstances specified in the concession contract.

10.2.4 Concession Operations

10.2.4.1 Operating Plans

The operating plan is an exhibit to the concession contract; the plan will describe operational responsibilities authorized in the contract between the concessioner and the Park Service. The plan is reviewed and updated annually by the Service in accordance with the terms of the contract. Operating plans are considered an integral part of a concessioner's contractual performance compliance. Some aspects of a concessioner's operating requirements may also be contained in general or specific provisions unique to that contract.

10.2.4.2 Service Type and Quality

It is the objective of the National Park Service that park visitors be provided with high-quality facilities and services. Where appropriate, the concession contract will specify a range of facility, accommodation, and service types that are to be provided at reasonable rates and standards to ensure optimal facility maintenance and quality services to visitors. Concessioners are not permitted to use or encourage pseudo-ownership concepts such as time shares or long-term rental agreements.

10.2.4.3 Evaluation of Concession Operations

Concession operations will be regularly evaluated to ensure that park visitors are provided with high-quality services and facilities that are safe and sanitary and meet NPS environmental, health, safety, and operational standards. As outlined in the concessioner operational evaluation program, the evaluation results will provide a basis for NPS management to determine (1)

whether to continue or terminate a concession contract, and (2) whether a concessioner is eligible to exercise a right of preference in the award of a qualified new concession contract for those categories of contracts where such a right is available by law.

10.2.4.4 Interpretation by Concessioners

Concessioners will be required to appropriately train their employees and, through their facilities and services, to instill in their guests an appreciation of the park, its purpose and significance, its proper and sustainable management, and the stewardship of its resources. When the provision of interpretive services is required by the contract, concessioners will provide formal interpretive training, approved by the Park Service, for their employees, or will participate in formal interpretive training that is either offered by the Park Service or cosponsored by the concessioner.

Visitor appreciation of the park can be instilled in many ways. For example, it can be accomplished through guided activities; the design, architecture, landscape, and decor of facilities; educational programs; interpretive menu design and menu offerings; and involvement in the park's overall interpretive program. Gift shop merchandise and displays also present opportunities to educate visitors about park history; natural, cultural, and historical resources; and sustainable environmental management.

Concession contracts will require the concessioner to provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals, and objectives articulated in each park's planning documents, mission statement, and/or interpretive prospectus.

(See Interpretive Competencies and Skills 7.4)

10.2.4.5 Merchandise

The National Park Service will approve the nature, type, and quality of merchandise to be offered by concessioners. Although there is no Service-wide list of specific preferred merchandise, priority will be given to sale items that foster awareness, understanding, and appreciation of the park and its resources and that interprets those resources. Merchandise should have interpretive labeling or include other information to indicate how the merchandise is relevant to the park and its interpretive program and themes.

Each concession operation with a gift shop will have a mission statement based on the park's concession service plan or general management plan. Concessioners will develop and implement a merchandise plan based on the park's gift shop mission statement. The merchandise plan must be satisfactory to the Director, and should ensure that merchandise sold or provided reflects the

significance of the park and promotes the conservation of the park's geological resources, wildlife, plant life, archeological resources, local Native American culture, local ethnic and traditional culture, historical significance, and other park resources and values. The plan should also integrate pollution prevention and waste-reduction objectives and strategies for merchandise and packaging.

Merchandise must be available at a range of prices. Theme-related merchandise manufactured or handcrafted in the United States—particularly in a park's geographic vicinity—will be encouraged. The revenue derived from the sale of United States Indian, Alaska Native, native Samoan, and Native Hawaiian handicrafts is exempt from any franchise fee payments.

10.2.4.6 Artifacts and Specimens

Concessioners will not be permitted to sell any merchandise in violation of laws, regulations, or NPS policies. The park superintendent may prohibit the sale of some items for retail sale because the merchandise is locally sensitive or inappropriate for sale. The sale of original objects, artifacts, or specimens of a historic, archeological, paleontological, or biological nature is prohibited. Replicated historic, archeological, paleontological, or biological objects, artifacts, or specimens may be sold if they are obvious replicas and clearly labeled.

Any geological merchandise approved for sale or exhibit by concessioners must be accompanied by appropriate educational material and a written disclaimer clearly stating that such items were not obtained from inside park boundaries. The proposed sale of any replicas, or of geological merchandise, must be addressed in the gift shop merchandise plan.

10.2.4.7 Rates

The National Park Service must approve all rates charged to visitors by concessioners. The reasonableness of a concessioner's rates and charges to the public will, unless otherwise provided in the contract, be judged primarily on the basis of comparison with current rates and charges for facilities and services of comparable character under similar conditions. Due consideration will be given to length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the NPS Director.

10.2.4.8 Risk Management Program

Concession contracts require each concessioner to develop a risk management program that is (1) appropriate in scope to the size and nature of the operation, (2) in accord with the Occupational Safety and Health Act of 1970 and the NPS concession risk management program,

and (3) approved by the superintendent. Concessioners are responsible for managing all of their operations to minimize risk and control loss due to accident, illness, or injury. To ensure compliance, the Service will include a risk management evaluation as part of its standard operational review of concession operations.

10.2.4.9 Natural and Cultural Resource Management Requirements

Concessioners are required to comply with applicable provisions of all laws, regulations, and policies that apply to natural and cultural resource protection. The use, maintenance, repair, rehabilitation, restoration, or other modification of concession facilities that are listed in or eligible for the National Register of Historic Places are subject to the applicable provisions of all laws, executive orders, regulations, and policies pertaining to cultural properties. The National Park Service will assist concessioners in understanding and complying with regulations for the protection of historic properties (36 CFR Part 800) promulgated by the Advisory Council on Historic Preservation. Historic structures and their contents and museum objects that are in the control of concessioners will be treated in accordance with the appropriate standards contained in NPS guidance documents. The Service will work closely with concessioners to integrate into concession activities the policies, procedures, and practices of Executive Order 13287 (Preserve America).

(See Chapter 4: Natural Resource Management; Use of Historic Structures 5.3.5.4.7. Also see Reference Manual 24: the Museum Handbook; Director's Order #28: Cultural Resource Management; #38: Real Property Leasing, and #48A: Concession Management)

10.2.4.10 Environmental Program Requirements

In the operation of visitor services, concessioners will be required by contract to meet environmental compliance objectives by:

- complying with all applicable laws pertaining to the protection of human health and the environment; and

- incorporating the best management practices in all operations, construction, maintenance, acquisition, provision of visitor services, and other activities under the contract.

Concessioners will also be required by contract to develop, document, implement, and comply fully with—to the satisfaction of the Director—a comprehensive, written environmental management program (EMP) to achieve environmental management objectives. The EMP:

- should be appropriate to the nature and size of the operation;
- must account for all activities with potential environmental impacts conducted by the concessioner, or to which the concessioner contributes;
- must be updated at least annually; and
- must be approved by the superintendent.

The scope and complexity of the EMP may vary based on the type, size, and number of concessioner activities. Exceptions to the requirement for an EMP must be approved by the Director.

The National Park Service will review concessioner compliance with the EMP under the contract. The Park Service will also:

- assist concessioners in understanding environmental program requirements;
- conduct environmental compliance audits of all commercial visitor services at least every three years in accordance with the concessions environmental audit program (the concessioner will be responsible for corrective actions required by law and identified during the environmental compliance audits); and
- include an environmental management evaluation as part of its annual standard operational reviews of concession operations.

(See Compensation for Injuries to Natural Resources 4.1.6; Integrated Pest Management Program 4.4.5.2; Compensation for Injuries to Cultural Resources 5.3.1.3; Overnight Accommodations and Food Services 9.3.2. Also see Director's Order #48A: Concession Management; Director's Order #83: Public Health)

10.2.4.11 Insurance

Concession contracts will identify the types and minimum amounts of insurance coverage required of concessioners to:

- provide reasonable assurance that concessioners have the ability to cover bona fide claims for bodily injury, death or property damage arising from an action or omission of the operator;

- protect the government against potential liability for claims based on the negligence of the operators; and

- enable rapid repair or replacement of essential visitor facilities located on park lands that are damaged or destroyed by fire or other hazards.

Concessioners will not be permitted to operate without liability insurance. Under limited conditions, concessioners may operate without property insurance, as described in Director's Order #48A: Concession Management.

10.2.4.12 Food Service Sanitation Inspections

Concessioners who prepare food on or off park lands or serve food on park lands will be subject to inspection for compliance with all applicable health and sanitation requirements of local and state agencies, the U.S. Public Health Service, and the Food and Drug Administration.

(Also see Director's Order #83: Public Health)

10.2.4.13 Smoking

Generally, all NPS concession facilities will be smoke free. The only exceptions—which the Service does not encourage—will be specifically designated smoking areas and rooms if allowed by state and local law. The sale of tobacco products through vending machines is prohibited.

(Also see Director's Order #50D: Smoking Policy; Executive Order 13058 (Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace))

10.2.4.14 Wireless Local Area Network

Concessioners may be authorized to provide wireless local area network access for park visitors and for administrative and employee use within concessioner assigned facilities. If this type of service is found to be necessary and appropriate and otherwise in accord with the park's planning and other guidance documents, the concession authorization's operating plan must identify the need for the service and the standards for offering the service. A request to construct telecommunications equipment and infrastructure outside the concessioner's assigned facilities must be processed in accordance with section 8.6.4.3.

10.2.5 Concessions Financial Management

Concession contracts must provide for payment to the government of a franchise fee, or other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States is subordinate to the objectives of protecting and preserving park areas and providing necessary and appropriate services for visitors at reasonable rates.

10.2.5.1 Franchise Fees

The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract must be specified in the concession contract and may only be modified to reflect extraordinary unanticipated changes from the conditions expected as of the effective date of the contract. Contracts with a term of more than five years will include a provision that allows reconsideration of the franchise fee at the request of the Director or the concessioner in the event of such extraordinary unanticipated changes. Such provision will provide for binding arbitration in the event that the Director and the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

10.2.5.2 Franchise Fee Special Account

All franchise fees and other monetary considerations will be deposited into a Department of the Treasury special account. In accordance with the NPS Concessions Management Improvement Act of 1998, twenty percent (20%) will be available to support activities throughout the national park system, and eighty percent (80%) will be available to the park unit in which it was generated for visitor services and funding high-priority and urgently necessary resource management programs and operations.

10.2.5.3 Record-keeping System

All concessioners will establish and maintain a system of accounts and a record-keeping system that use written journals and general ledger accounts to facilitate the preparation of annual concessioner financial reports.

10.2.5.4 Annual Financial Reports

For each concession contract, concessioners will be required to submit a separate annual financial report that reflects only the operations they are authorized to provide under that particular contract.

10.2.5.5 Donations to the National Park Service

The National Park Service will not solicit or accept direct donations or gifts from entities that have or are seeking to obtain a concessions contract. The Park Service will not require any concessioner to donate or make contributions to the Service under any circumstance, including the incorporation of such a requirement in concession contracts. Further guidance on donations is available in Director's Order #21: Donations and Fundraising.

10.2.6 Concession Facilities

All buildings under a concession contract are U.S. government/Service-owned structures and are part of the overall facility inventory at each park. Depending on the contract, the concessioner may have a contractual right of compensation in the form of a leasehold surrender interest or possessory interest in one, some, or all of the buildings. Responsibilities for maintenance, environmental management, and other operational issues must be included in each concession contract. Park facility managers will work closely with the park's concession program managers to ensure that these government buildings are part of the overall park inventory and tracking systems. Park managers will ensure that possessory interests and leasehold surrender interest valuations conform to the terms and conditions of the concession contract.

10.2.6.1 Design

Concession facilities will be of a size and at a location that the Service determines to be necessary and appropriate for their intended purposes. All concession facilities must comply with applicable federal, state, and local construction codes, and meet accessibility requirements as set forth in applicable accessibility guidelines. Proposed concession facilities must conform to NPS standards for sustainable design, universal design, and architectural design. Concession development or improvement proposals must undergo review for compliance with the National Environmental Policy Act of 1969 and section 106 of the National Historic Preservation Act (16 USC 470f), and proposals must be carried out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation and other applicable legal requirements.

In addition to general park design requirements, the Park Service will apply value analysis during the design process to analyze the functions of facilities, processes, systems, equipment, services, and supplies. Value analysis must be used to help achieve essential functions at the lowest life-cycle cost, consistent with required performance, reliability, environmental quality, and safety criteria and standards.

(See Facility Planning and Design 9.1.1)

10.2.6.2 Accessibility of Commercial Services

Concessioners share the National Park Service's responsibility to provide employees and visitors with the greatest degree of access to programs, facilities, and services that is reasonable, within the terms of existing contracts and agreements. Applicable laws include, but are not limited to (1) regulations issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended (43 CFR Part 17), which prohibits discrimination on the basis of disability in programs or activities conducted by federal executive agencies; and (2) the Architectural Barriers Act of 1968, which requires physical access to buildings and facilities. Where there is no specific language identifying applicable accessibility laws in an existing concession contract, the Park Service will address the issue of compliance in the annual concession operating plan.

(See Physical Access for Persons with Disabilities 5.3.2; Accessibility for Persons with Disabilities 1.9.3, 8.2.4 and 9.1.2. Also see Director's Order #42: Accessibility for Visitors with Disabilities in National Park Service Programs and Services)

10.2.6.3 Maintenance

Concession contracts will require concessioners to be responsible for all maintenance and repair of facilities, lands, and utility systems assigned for their use, in accordance with standards acceptable to the Service. Exceptions will be made only in extraordinary circumstances, as determined by the Director. All concession contracts must include a current maintenance plan as specified in the concession contract. Maintenance plans are an exhibit to the concession contract and will be considered an integral part of a concessioner's contractual performance compliance.

Maintenance of historic properties and cultural landscapes will be carried out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

10.2.6.4 Utilities and Services

Utilities include, but are not limited to, electricity, fuel, natural gas, water, disposal of wastewater and solid waste, and communication systems. When available, the Service may provide utilities to the concessioner for use in connection with the operations required or authorized under the contract at rates to be determined in accordance with applicable laws. If the Service does not provide utilities to the concessioner, the concessioner will, with the written approval of the Director and under any requirements prescribed by the Director, (1) secure necessary utilities at its own expense from sources outside the area; or (2) install the utilities within the area, subject to conditions of the contract.

(Also see Director's Order #35B: Sale of National Park Service-produced Utilities)

10.2.6.5 Closure of Commercial Operations During Government Shutdown

The Anti-Deficiency Act requires federal agencies to suspend all nonessential activities whenever there is a failure to enact an appropriations bill or adopt a continuing resolution. All concessioner-operated programs and services must cease, and visitors must be asked to leave within 48 hours. All commercial facilities and services in a park will be closed to protect the safety of visitors and the integrity of park resources. Exceptions to this policy include concessions that are required for health and safety purposes or protection of the environment, or that are necessary to support park operations that are deemed essential, such as law enforcement.

Commercial facilities located on through-roads (roads or public highways that begin and end outside of a park, plus parkways) and public highways may remain open if doing so does not result in additional costs to the park (for example, the staffing of entrance stations). These commercial facilities may include operations such as service stations, food services, stores, and lodging, or portions of such operations. The commercial facility in question should have access directly from the road or highway and not require the reopening of park roads having other destinations. More specific aspects of closures may be guided by a Service-wide shutdown plan.

10.2.7 Concessioner Employees and Employment Conditions

10.2.7.1 Nondiscrimination

Concessioners will comply with all applicable laws and regulations relating to nondiscrimination in employment and the provision of services to the public. As the National Park Service strives to achieve workforce diversity, so too will concessioners be encouraged to recognize workforce diversity as a sound business practice.

10.2.7.2 Substance Abuse

In compliance with state and federal regulations condemning substance abuse, the Park Service prohibits the unlawful possession, use, or distribution of illicit drugs and alcohol. The Service also prohibits the unlawful manufacture, cultivation, processing, or transportation of illicit drugs. This policy applies to concessioners and their employees, at any facility or in any activity taking place on NPS lands. Concessioners are required to provide and advise employees about the availability of employee assistance programs addressing substance abuse problems.

10.2.8 NPS Employees

10.2.8.1 Accepting Gifts and Reduced Rates from Concessioners

NPS employees may not receive concessioner goods or services at a discount unless it is in connection with official business, is to the government's advantage, and is provided for under the terms of a concession contract. However, employees may accept reduced rates or discounts offered by the concessioner when those same reduced rates or discounts are available to the general public.

NPS employees may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a concessioner or other person who conducts operations and activities that are regulated by the Department of the Interior. Employees should consult with their ethics counselor regarding the limited exceptions to the general prohibition on accepting gifts from outside sources.

10.2.8.2 Employment of NPS Personnel or Family Members by Concessioners

Federal law prohibits government employees from making recommendations, decisions, or approvals relating to applications, contracts, controversies, or other matters in which the employee or the employee's spouse or minor child has a financial interest. Park employees may not make decisions, approvals, or recommendations related to concession activities when their spouse or dependent child is employed by a park concessioner in that particular park. For example, the spouse or dependent child of the superintendent, assistant superintendent, concession staff, environmental manager, or public health specialist may not be employed by a concessioner in the specific park in which the NPS employee works.

(Also see Director's Order #37: Home Businesses in Park Housing)

10.2.8.3 NPS Employee Ownership or Investment in Concession Businesses

Department of the Interior policy prohibits employees and their spouses and minor children from acquiring or retaining for commercial purposes any permit, lease, or other rights granted by the Department for conducting commercial services on federal lands. Therefore, no NPS concession contract or commercial use authorization to conduct commercial services in a park will be issued to NPS employees or their spouses and minor children who are owners, partners, corporate officers, or general managers of any business seeking such a contract in federal land managed by the Department of the Interior. Further, to avoid the appearance of partiality and conflicts of interest, and to comply with ethics laws that apply to all federal employees, NPS employees may not work on any matter involving a business in which they, their spouse, or their minor children have a financial interest.

10.2.8.4 Concession Management Personnel Qualifications

To effectively carry out the concession management program, managers and supervisors will make every effort to ensure that personnel selected for positions meet the essential competencies established for the position being filled. When concession management personnel lack the full complement of essential competencies or require refresher training for their position, managers and supervisors will ensure that those employees are trained and certified as competent. All personnel vacancy announcements issued for concession management must include program competencies.

10.3 Commercial Use Authorizations

Commercial use authorizations (CUAs), which are not considered as concession contracts, may be issued pursuant to section 418 of the National Park Service Concessions Management Improvement Act of 1998 (16 USC 5966). A commercial use authorization is a permit that authorizes suitable commercial services to park area visitors in limited circumstances as described in 10.3.1. A concession contract may be issued instead of the commercial use authorization when the Director determines that the services are necessary and appropriate, and/or provision of the services require certain protections such as legal, financial, and resource provisions that are more typical of a concession contract. A more detailed discussion of commercial use authorizations is included in Director's Order #48B: Commercial Use Authorizations.

10.3.1 General

Commercial use authorizations may be issued only to authorize services that (1) are determined to be an appropriate use of the park; (2) will have minimal impact on park resources and values;

and (3) are consistent with the purpose for which the unit was established, as well as all applicable management plans and park policies and regulations.

10.3.2 Requirements

By law, a commercial use authorization must provide for:

- payment of a reasonable fee, such fees to be used, at a minimum, to recover associated management and administrative costs;
- provision of services in a manner consistent to the highest practicable degree with the preservation and conservation of park resources and values; and
- limitation of liability of the federal government arising from the commercial use authorization.

No park may issue commercial use authorizations in a quantity inconsistent with the preservation and proper management of park resources and values. Each park issuing commercial use authorizations will ensure that it contains provisions for the protection of visitors and the resources and values of the park.

10.3.3 Limitations

By law, commercial use authorizations may be issued only for:

- commercial operations with annual gross receipts of not more than \$25,000 resulting from services originating and provided solely within a unit of the national park system pursuant to such authorization;
- the incidental use of resources of the unit by commercial operations that provide services originating and terminating outside of the boundaries of the park unit; or
- such uses for organized children's camps, outdoor clubs, nonprofit institutions (including backcountry use), and such other uses as the Secretary of the Interior deems appropriate.

Nonprofit institutions will be required to obtain commercial use authorizations only when they generate taxable income from the authorized use.

10.3.4 Construction Prohibition

By law, under no circumstances will a commercial use authorization provide for or allow construction of any structure, fixture, or improvement on federally owned land within any unit of the national park system.

10.3.5 Duration

By law, the maximum term for any commercial use authorization is two years in length. No rights of renewal are associated with commercial use authorizations.

10.3.6 Other Contracts

Holding or seeking to obtain a commercial use authorization does not preclude a person, corporation, or other entity from submitting proposals for concessions contracts.



4(c). Director's Orders

Introduction

NPS also issues "Director's Orders" covering various issues that may relate to NPS concession operations. A list of the Director's Orders is set out below, and the orders themselves are available at <http://home.nps.gov/applications/npspolicy/DOrders.cfm>.

The Director's Orders provides NPS managers and staff guidance on Service-wide policy and required or recommended practices and procedures. NPS issues Director's Orders to accomplish the following:

- communicate policies, instructions and requirements to employees;
- delegate line and functional authority and assign responsibilities;
- inform interested persons outside the NPS about NPS policy; and
- provide appropriate opportunities for NPS employees and the public to participate in the process.

As with the NPS Management Policies (2006), the Director's Orders are not usually found not to be binding as a matter of law.

Guidance Document	Title	Status
Director's Order 1	Directives System	Reissued 11/14/2008
	Things to Know About NPS Policy	Available
Director's Order 2	Park Planning (see Chapter 2 of Management Policies)	Superseded by Chapter 2 of Management Policies 2006
	Chapter 2 of Management Policies	Available
Director's Order 3	(unassigned)	
Director's Order 4	Diving Management	Reissued 5/4/2003
	DOI Policy: Underwater Diving Safety (485 DM 27)	Available
	Reference Manual 4: Diving Safety and Operations Manual	Available
Director's Order 5	Paper and Electronic Communications	Approved 7/10/2000

	DOI Policy: Limited Personal Use of Government Office Equipment/Library Collections (410 DM 2)	Available
	Washington Office Correspondence Manual	Available (restricted access)
Director's Order 6	Interpretation and Education	Approved 1/19/2005
Director's Order 7	Volunteers in Parks	Approved 3/15/2016
	DRAFT Reference Manual 7	Available (restricted access)
Director's Order 8	Budget and Programming	Being developed.
Director's Order 9	Law Enforcement Program	Re-issued 3/23/2006
	Reference Manual 9: Law Enforcement	Available (public version-unrestricted access)
	Reference Manual 9: Law Enforcement	Available (restricted access)
Director's Order 10A	Design and Construction Drawings	Approved 4/15/2003
	Reference Manual 10A	Being developed
Director's Order 10B	Drawing and Map Numbers	Approved 4/8/10
	Reference Manual 10B	Available
Director's Order 11A	Information and Technology Management	Approved 4/4/5
Director's Order 11B	Ensuring Quality of Information Disseminated by the NPS	Approved 10/16/02
	Interim guidance document on peer review, information quality, and code of conduct	Available
	PM 07-03 Interim policy for scientific and scholarly code of conduct, peer review, and information quality	Approved 2/6/08
	Proposed update to Director's Order #11B	Review period closed 11/15/08
Director's Order 11C	Web Publishing	30-day review closed 6/19/06
Director's Order 11D	Records and Electronic Information Management	Approved 1/06/12

	REIM Guide	Available (restricted access)
	Service-wide Records Schedule (SRS)	Available (restricted access)
Director's Order 12	Environmental Impact Analysis	Approved 10/5/11
	National Park Service NEPA Handbook (9/9/2015)	Available
Director's Order 13A	Director's Order #13A: Environmental Management Systems	Available
	Environmental Management Systems intranet site	Available (restricted access)
	NPS Environmental Purchasing Handbook	Available (restricted access)
	Reference Manual 13A	Available
Director's Order 13B	Solid and Hazardous Waste Management	Being developed
	Hazardous Waste Operations and Emergency Response -- 24 Hour Training Manual	Available
Director's Order 14	Resource Damage Assessment and Restoration (pdf file)	Approved 9/28/04
	Damage Assessment and Restoration Handbook	Available
	Summary of Resource Damage Assessment and Restoration authorities	Available
Director's Order 15	NPS Frequency Management Guidance	Approved 2/4/15
	NPS Frequency Management Guidance for Radio, Communications-Electronics, and Wireless Systems	Available for 30-day review until 9/12/2014. Restricted access
Director's Order 16A	Reasonable Accommodation for Applicants and Employees with Disabilities	Approved 5/4/99
Director's Order 16B	Diversity in the National Park Service (pdf file)	Approved 3/29/2012
	Diversity in the National Park Service (htm file)	Approved 3/29/2012

Director's Order 16C	Discrimination Complaints Process	Being developed
Director's Order 16D	Equal Employment Opportunity and Zero Tolerance for Discrimination (pdf file)	Renewed 12/28/11
	Equal Employment Opportunity and Zero Tolerance of Discrimination (htm file)	Renewed 12/28/11
	Equal Employment Opportunity Commission regulation (29 CFR 1614)	Available
Director's Order 16E	NPS Anti-Harassment Policy (htm file)	Approved 4/19/2018
	NPS Anti-Harassment Policy (pdf file)	Approved 4/19/2018
	Reference Manual 16E: Anti-Harassment Policy	Available
Director's Order 17	Tourism	Approved 9/28/99
Director's Order 18	Wildland Fire Management	Approved 1/16/08
	Interagency Burned Area Emergency Response Guidebook	Available
	National Fire and Aviation Website	
	PDF version of Director's Order #18 PDF	Available
	Reference Manual 18: Wildland Fire	Available
Director's Order 19	Records Management	Superseded by Director's Order #11D
Director's Order 20	Agreements	Renewed 7/23/03
	DOI Policy: Procurement Contracts, Grant and Cooperative Agreements (505 DM 2)	Available
Director's Order 21	Donations and Philanthropic Partnerships	Approved 12/28/2016
	Reference Manual 21	Being developed (new chapters posted as they become available)
Director's Order 22	Recreation Fees	Approved 5/14/10

	Fee Collection Reference Manual (RM-22A)	Available (restricted access)
Director's Order 24	Museum Collections Management	Reissued 9/03/08
	Museum Handbook	Available
	Museum Management Program website	
Director's Order 25	Land Protection	Approved 1/19/01
	Reference Manual 25	Available
Director's Order 26	Youth Programs	Approved 11/08/02
Director's Order 27	Challenge Cost-share Program	Being developed.
Director's Order 28	Cultural Resource Management	Available
	NPS-28 Cultural Resource Management Guideline	Available
	PM 14-02 Climate Change and Stewardship of Cultural Resources	Approved 2/10/14
	Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68)	Available
Director's Order 28A	Archeology	Approved 10/12/04
	NPS Archeology website	Available
Director's Order 28B	Ethnography	Being developed
	Park Ethnography Program website	Available
	Reference Manual 28B	Being developed
Director's Order 28C	Oral History	Being developed
	Handbook for Oral History in the NPS	Being developed
Director's Order 29	(unassigned)	
Director's Order 30	(unassigned)	
Director's Order 31A	Travel Procedures	Being developed.

	International Travel Procedures	Available (restricted access)
	Temporary Duty Travel	Available (restricted access)
Director's Order 31B	Relocation Policies	60-day review closed 3/9/2015
	Permanent Change of Station Employee Handbook (April 2010)	Available
	PM 13-01 Official Travel Driving Policy	Approved 4/3/2013
	Relocation Resource Manual (July 2010)	Available
Director's Order 32	Cooperating Associations	Renewed 6/07/10
	Amendment to RM-32	Approved 9/6/18
	Reference Manual 32	Approved 2/10/17
Director's Order 33	Learning and Development	Approved 11/14/08
Director's Order 34	Superintendent's Compendium	Being developed
Director's Order 35A	Sale of Resources or Services to Support Activities Outside of Parks	Renewed 7/8/04
Director's Order 35B	Sale of NPS Produced Utilities	Approved 12/31/11
	Reference Manual 35B	Available
Director's Order 36	NPS Housing Management	Approved 8/5/09
	PM 11-01 Minor Employees in Park Housing	Approved 2/24/11
	Reference Manual 36: Housing Management (and related documents)	Available (restricted access)
Director's Order 37	(unassigned)	
Director's Order 38	Real Property Leasing (577 kb pdf file)	Approved 1/19/06
	Memo on Waiver of Appraisals for Leasing	Available
	PM 07-01 Leasing vs. Concessions Contracts or CUAs	Approved 5/29/07
	RM-38: Leasing reference manual for 36 CFR Part 18	Available (restricted access)

Director's Order 39	Ocean and Coastal Resource Management	Being developed.
	Coastal Adaptation Strategies Handbook	Available
	RM 39-2--Beach Nourishment Guidance	Available (https://irma.nps.gov/App/Reference/Profile/2185115)
	RM 39-4--Shoreline Length and Water Area in Ocean, Coastal, and Great Lakes Parks	Available (https://irma.nps.gov/App/Reference/Profile/2180595)
Director's Order 40	Dam Safety and Security Program	Approved 5/25/10
	Reference Manual 40: Dam Safety Program	Available
Director's Order 41	Wilderness Stewardship	Approved 5/13/13
	Reference Manual 41	Available
Director's Order 42	Accessibility for Park Visitors	Approved 11/3/2000
	PM 18-02 Use of Service Animals by Visitors with Disabilities	Approved 10/18/18
Director's Order 43	Uniform Program	Approved 10/1/00; amended 8/7/18
	Reference Manual 43	Available
Director's Order 44	Personal Property Management	Approved 2/08/08
	Personal Property Management Handbook #44	Available
	Property Management website	Available (restricted access)
Director's Order 45	National Trails System	Approved 5/24/13
	Reference Manual 45	Being developed
Director's Order 46	Wild and Scenic Rivers	Approved 5/1/15
Director's Order 47	Sound Preservation and Noise Management	Approved 12/1/00
Director's Order 48A	Concession Management	60-day review closed 1/5/04
	Chapter 10 of Management Policies	Available
	Memorandum on leasing vs. contracting	Approved 5/29/07

Director's Order 48B	Commercial Use Authorizations	Being developed
Director's Order 49	(unassigned)	
Director's Order 50A	Workers Compensation Case Management	Approved 3/30/98
Director's Order 50B	Occupational Safety and Health Program	Reissued 9/3/08
	DOI Serious Accident Investigation (SAI) Guide	Available
	Interagency SAI Guide	Available
	PM 13-01 Official Travel Driving Policy	Approved 4/3/2013
	Reference Manual 50B-- Occupational Safety and Health Program	Available
	Risk Management Program Intranet site	Available (restricted access)
Director's Order 50C	Public Risk Management Program	Approved 5/7/10
	Reference Manual 50C	Available (restricted access)
Director's Order 50D	Smoking Policy	Renewed 6/29/09
	PM 15-03 Use of Electronic Nicotine Delivery Systems	Available
Director's Order 51	Emergency Medical Services	Approved 9/19/05
	Reference Manual 51	Available (restricted access)
Director's Order 52A	Communicating the National Park Service Mission	Approved 1/31/01
	Graphic Identity Program Overview	Available
Director's Order 52B	Graphic Design Standards	60-day review closes 6/1/12
Director's Order 52C	Park Signs	Approved 9/29/03
	NPS Sign Program and Sign Standards Manuals	Available (manuals-restricted access)
	Park Signs	Review of revised draft closed 6/14/10
Director's Order 52D	Use of the Arrowhead Symbol	45-day review closed 5/24/12

Director's Order 53	Special Park Uses	Re-issued 2/23/2010
	Commercial Filming/Photography Permit Application -- Long Form	Available
	Commercial Filming/Photography Permit Application -- Short Form	Available
	PM 15-02 Employee and Volunteer Participation in Commercial Filming	Approved 8/31/2015
	Reference Manual #53	Available
	Special Use Permit -- Application and Permit Forms	Available (restricted access)
Director's Order 54	Management Accountability	30-day review closed 5/23/03
	Department of the Interior Management Accountability Guidance	Available
Director's Order 55	Incident Management Program	Approved 1/2/08
	Reference Manual 55: Incident Management Program	Available
Director's Order 55*	Interpreting the NPS Organic Act	Obsolete--superseded by guidance in section 1.4 of Management Policies
Director's Order 56	International Activities	Available
Director's Order 57A	Medical Standards Program	Approved 1/9/14
	Reference Manual 57A (April 2013)	Available
Director's Order 57B	Employee Fitness	Being developed
	PM 14-03 Employee Fitness -- Interim Policy	Approved 3/7/14
	Reference Manual (Occupational Health and Fitness)	Available
Director's Order 58	Structural Fire Management	Renewed 4/22/10
	Other Structural Fire Related Policies and Documents	Available
	Reference Manual 58	Available
Director's Order 59	Search and Rescue	Being developed

Director's Order 60	Aviation Management	Approved 7/3/2012
	DOI Policy: Aviation Management (Departmental Manual parts 350 to 360)	Available
	RM-60 Aviation Reference Manual	Available
Director's Order 61	National Cemetery Operations	Approved 7/29/10
	Reference Manual 61--National Cemetery Operations	Available
Director's Order 62	Property Acquisition	Being developed
Director's Order 63	Geographic Names	60-day review closed 4/06/09
	Principles, Policies, and Procedures	Available
Director's Order 64	Commemorative Works and Plaques	Being developed
Director's Order 65	Explosives Use and Blasting Safety	Approved 5/25/99
	NPS Handbook for the Storage, Transportation, and Use of Explosives	Available
Director's Order 66	FOIA and Protected Resource Information (draft for internal NPS use only--public draft will follow)	60-day review closed 2/11/05
	DOJ Guidance to FOIA	Available
	Reference Manual 66A: FOIA Processing (draft for internal NPS use only--public draft will follow)	Review and comment period closed 2/11/05
	Reference Manual 66B: Handling Protected Information (draft for internal NPS use only--public draft will follow)	Review and comment period closed 2/11/05
Director's Order 67	Copyright and Trademarks	Being developed
Director's Order 68	Notification Protocol for Conduct of Employee Investigations	Approved 1/5/98
Director's Order 69	Serving on Boards of Directors	Being developed
Director's Order 70	Internet and Intranet Publishing	Approved 1/8/01

	Digital Community Site (replaces Internet/Intranet Publications Manual)	Available (internal access only)
	DOI Policy: Web Standards and Guidelines (386 DM 3)	Available
	DOI Web Standards Handbook	Available
	PM 11-02 Social Media -- Interim Policy	Approved 12/15/11
Director's Order 71A	Relationship with American Indian Tribes (see section 1.11 of Management Policies)	Superseded by 1.11 of Management Policies 2006
	DOI Policy: Departmental Responsibilities for Indian Trust Resources (512 DM 2)	Available
Director's Order 71B	Indian Sacred Sites	Being developed
	Executive Order No. 13007 (Indian Sacred Sites)	Available
Director's Order 72	Receiving or Generating Individual Indian Trust Data	Reissued 10/29/04
Director's Order 73	(unassigned)	
Director's Order 74	Studies and Collecting	Being developed
Director's Order 75A	Civic Engagement and Public Involvement (htm file)	Renewed 8/30/07
	Civic Engagement and Public Involvement (pdf file)	Renewed 8/30/07
Director's Order 75B	Media Relations	Being developed
	NPS Guide to Public Affairs	Available (restricted access)
Director's Order 76	Legislative and Congressional Affairs	Approved 3/11/05
	Reference Manual 76, Part A -- Legislative Support Data Package Guidance	Available
Director's Order 77	Natural Resource Protection	Being developed.
	NPS-75, Natural Resources Inventory and Monitoring (pdf)	Available

	Reference Manual 77: Natural Resource Management	Available
Director's Order 77-1	Wetland Protection	Re-issued 10/30/2002
	Wetland Protection Procedural Manual	Available
Director's Order 77-10	NPS Benefits Sharing	Approved 12/19/13
	Benefits Sharing Overview	Available
	Benefits-Sharing Handbook (Oct. 2018)	Available
Director's Order 77-2	Floodplain Management	Approved 9/8/03
	Procedural Manual 77-2	
Director's Order 77-3	Domestic and Feral Livestock Management	Being developed
Director's Order 77-4	Use of Pharmaceuticals for Wildlife	45-day review closed 12/31/15
Director's Order 77-5	Bioengineered Organisms	Being developed
Director's Order 77-6	Cooperative Research and Development Agreements	Being developed
Director's Order 77-7	Integrated Pest Management	Being developed
	Integrated Pest Management Manual	Available
Director's Order 77-8	Endangered Species	Being developed
Director's Order 77-9	Fishing and Fishery Management	Being developed
Director's Order 78	Social Science	Approved 10/7/02
Director's Order 79	Integrity of Scientific and Scholarly Activities	Approved 9/19/12
	DOI Policy: Integrity of Scientific and Scholarly Activities (305 DM 3)	Available
Director's Order 80	Real Property Asset Management	Approved 11/20/06
	PM 15-01 Addressing Climate Change and Natural Hazards for Facilities	Available

Director's Order 81	Employee Surveys	Being developed.
Director's Order 82	Public Use Data Collecting and Reporting	60-day review closed 2/16/04.
Director's Order 83	Public Health	Reissued 10/21/4
	Reference Manual 83A: Public Health: Protection and Prevention	Available
Director's Order 84	Library Management	Being developed
Director's Order 85	Garnishments and Levies	Being developed
Director's Order 86	(unassigned)	
Director's Order 87A	Park Roads and Parkways	Being developed
	NPS Transportation Planning Guidebook	Available
	Park Road Standards (1984)	Available
Director's Order 87B	Alternative Transportation Systems	Being developed
	Alternative Transportation website	Available
Director's Order 87C	(unassigned)	
Director's Order 87D	Non-NPS Roads	Approved 12/14/00
Director's Order 88	(unassigned)	
Director's Order 89	Acquisition and Management of Leased Space	Approved 3/5/03
Director's Order 90	Value Analysis	Approved 10/2/02
	DOI Policy: Value Analysis General Criteria and Policy (369 DM 1)	Available
	OMB Circular No. A-131	
	Value Analysis tools and templates	Available
Director's Order 91	Advisory Committees	Being developed.
	NPS Guide to the Federal Advisory Committee Act	Available

Director's Order 92	Servicewide Workforce Management	Approved 3/30/10
	DOI Human Resources Guidance	
	NPS Human Resources Home Page	
Director's Order 93	Conflict Resolution	Approved 7/3/01
	CORE PLUS Implementation Handbook	Available
	DOI Office of Collaborative Action and Dispute Resolution	Available
	Finding Neutrals	
Director's Order 94	Appeals and Hearings	Being developed
Director's Order 95	Energy and Minerals Management	Being developed
Director's Order 100	Resource Stewardship for the 21st Century	Rescinded 8/16/2017
	PM 16-01 Resource Stewardship for the 21st Century -- Interim Policy	Superseded by Director's Order #100



4(d). Commercial Use Authorization Interim Guidelines

Background

In addition to concession contracts, NPS is also authorized to issue commercial use authorizations (CUAs) to permit concession-type services on National Park System lands.⁷ CUAs are not covered by the regulations which apply to concession contracts.⁸ In addition, NPS does not have to issue a prospectus or have a competition prior to issuing a CUA but can conduct a competition if there are limited authorizations which can be issued.

NPS can issue CUAs when the services will have a minimal impact on the area and are consistent with the purposes for which the area was established.⁹ CUAs can only be issued for operations that NPS determines to be appropriate, and typically are used for acceptable operations that originate and stay within the NPS unit where the annual gross receipts of the operation are not more than \$25,000 and operations that involve the “incidental use” of the NPS unit and originate and terminate outside the NPS unit.¹⁰ However, CUAs do not authorize the construction of any structures on NPS land and cannot exceed two years in length.¹¹ NPS will charge a reasonable fee for the use authorized by a CUA, which may be a flat fee or based on a percentage of revenues. CUAs are often issued for operations such as commercial tour operators and guided services for hiking, horseback trips, backpacking and rafting.

NPS has not yet issued regulations regarding how and when it will issue and administer CUAs. However, it has issued interim guidelines for CUAs. These guidelines are set out below. Because they consist of policy statements and are not regulations, as with Director’s Orders, they are usually found not to be legally binding on the agency.

COMMERCIAL USE AUTHORIZATIONS: NPS INTERIM GUIDELINES

Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105–391 (Section 418), authorizes (but does not require) NPS, upon request, to issue commercial use authorizations (CUAs) to persons (referring to individuals, corporations and other entities) to provide commercial services to park area visitors in limited circumstances. CUAs, although used to authorize commercial services to park area visitors, are not concession contracts. They are intended to provide a simple means to authorize suitable commercial services to visitors in park

⁷ 54 U.S.C. § 101925(a).

⁸ *Id.*

⁹ 54 U.S.C. § 101925(b).

¹⁰ 54 U.S.C. § 101925(c).

¹¹ 54 U.S.C. § 101925(e), (f).

areas in the limited circumstances described below. There is overlap between CUAs and concession contracts. A concession contract instead of a CUA may be awarded (under 36 CFR Part 51) if it is determined that the proposed services are necessary and appropriate for public use and enjoyment of the park area and that the more extensive requirements of a concession contract are necessary in light of the scope and nature of the services to be provided.

Types of CUAs

There are two general types of commercial services that may be authorized by a CUA:

(1) **In-park services.** “In-park services” refers to an operation with annual gross receipts of not more than \$25,000 from commercial services originating and provided solely within a park area. An example of an in-park service is firewood sales to visitors in a park area campground.

(2) **Out-of-park services.** “Out-of-park “services” refers to the incidental use of park area resources by operations that provide commercial services originating and terminating outside of the park area (or within an inholding). An example of an out-of-park service is a horseback trail ride operation that is based outside of the park area but takes visitors on rides into and out of the park area. A CUA of this type may not authorize solicitation of customers, sales, or payment for commercial services to take place within the park area; all of these activities must occur outside of the park area (or within an inholding). Unlike a CUA for in-park services, there is no cap on the annual gross receipts that may be generated by the authorized services under an out of-park CUA.

Issuance of Commercial Use Authorizations

CUAs may be issued in the following conditions:

- (1) The authorization is issued to a qualified person to permit the provision of suitable commercial services to park area visitors. (A qualified person is a person that the superintendent determines has the ability to satisfactorily carry out the terms of the commercial use authorization);
- (2) The superintendent determines that the commercial services: (a) will have minimal impact on the park area’s resources and values; (b) are consistent with the purposes for which the park area was established; and, (c) are consistent with all applicable park area management plans, policies and regulations;

- (3) For in-park services, the annual gross receipts are estimated to be less than \$25,000; and the superintendent determines that the terms and conditions of the authorization require the commercial services and related activities to be undertaken in a manner that is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. The authorization may include, when appropriate, terms and conditions designating use of a limited portion of a park area and/or visitor use limitations (entrance, user days, or similar use allowances).

Limiting the Number of Commercial Use Authorizations in a Park Area

The superintendent is not to issue more CUAs than are consistent with the preservation and proper management of park resources and values. In considering whether to limit the number of CUAs to be issued for a particular type of commercial services, consideration should be given to the broader context in which CUA limits will be applied, including possible limits on private individuals, institutional use and commercial use. One tool is to limit the number of commercial operators. Other tools may include limiting use of all types by time period, area, number of trips, user days, party size or other parameters.

Actions to Take if the Number of Commercial Use Authorizations is Limited

If the superintendent does determine to limit the number of CUAs to be issued for a particular type of commercial service, the issuance of the available authorizations is to be accomplished by the superintendent through a competitive process (unless otherwise provided with respect to Alaska park areas by Section 1307 of the Alaska National Interest Lands Conservation Act). The process is to provide all applicants a fair opportunity to obtain an available authorization. The most qualified applicant(s) (as determined under criteria developed by the superintendent as part of the competitive process) will be selected for issuance of the available CUAs. Superintendents are to consult with the applicable Regional Concession Program Manager to develop procedures and criteria for the competitive selection process.

If the superintendent limits the number of CUAs issued for a park area for a particular type of commercial service, or, if the superintendent establishes visitor use limitations under the authorization, the superintendent must take appropriate measures to ensure that the commercial services are provided to visitors at reasonable rates and under appropriate operating conditions. The superintendent may include in the applicable CUAs special terms and conditions for this purpose (see attached CUA form). Superintendents are to consult with the Regional Concession Program Manager when considering limiting the number of CUAs to be issued or regarding reasonable rates or operating conditions.

Decision Process

A decision to issue a CUA (or to limit the number of CUAs to be issued) must be made in accordance with park area planning policies and procedures, including appropriate compliance with NEPA and/or Section 106 of the National Historic Preservation Act as applicable.

Term of Commercial Use Authorizations

The term of a CUA may not exceed 2 years and no preferential right of renewal or similar provisions for renewal may be provided.

Construction Under CUAs

A CUA may not authorize construction of structures, fixtures or improvements within in a park area. However, a CUA may provide for the use of existing NPS buildings when necessary to assist in providing the authorized commercial services. If the provider will be responsible for a particular facility or assigned area within which they conduct their services, the authorization should include an assignment of those areas as an attached special provision to the CUA Form, including any associated fee requirements.

Commercial Tours

Commercial tours that meet the requirements of these guidelines will be authorized through CUAs. (A commercial tour consists of one or more persons traveling on an itinerary that has been packaged, priced or sold for leisure/recreational purposes and no other services (except for incidental services such as on-board interpretation and box lunches) are provided.) Fees and related issues regarding commercial tours will be established under separate guidelines. Until new guidance is issued, current policy remains in effect regarding:

1. Use of the established tour fee schedule (see attached Exhibit C);
2. Park areas using the commercial tour fee schedule should not charge an additional administration fee if the park area issues CUAs for commercial tours (see attached Exhibit D);
3. No limitations on the number of commercial tour CUAs are allowed unless limitations are supported by other approved processes and policies; and
4. One year notification to the tour industry regarding fee changes is required.

Non-Profit Organizations

In accordance with Section 418, a non-profit organization is not required to obtain a CUA to conduct activities in a park area (even if the activities would otherwise be subject to authorization by a CUA) if the nonprofit organization does not derive taxable income from the activities. (A non-profit organization is an organization that has been determined by the Internal Revenue Service to be exempt from Federal income taxation as a nonprofit or not-for-profit organization under the terms of the Internal Revenue Code.) In order to avoid the need to obtain a CUA where it would otherwise be required, a non-profit organization must state in writing to the superintendent that it will derive no taxable income from its activities in the park area, and, if requested, further substantiate this statement to the satisfaction of the superintendent. (Taxable income means income that is subject to Federal income tax under the terms of the Internal Revenue Code.)

However, a non-profit organization is required to obtain special use permits or other appropriate authorization as may otherwise be required by applicable NPS policies and regulations (and pay to NPS any required fees associated with the authorization) when engaging in activities on park area lands. Note that 36 CFR 5.3, in the absence of special regulations, prohibits engaging in or soliciting any business in park areas except in accordance with a permit, contract, or other written agreement.

Fees

The superintendent is required to charge a reasonable fee for a commercial use authorization, the fees to remain available for expenditure by the superintendent to recover, at a minimum, associated management and administrative costs. Additional guidance on establishment and expenditure of CUA fees is to be issued. In the interim, the fee establishment and expenditure guidelines applicable to IBPs (see the applicable section of Special Directive 95-10) shall continue to be followed. However, as park area facilities were not assigned under the IBP program, a fee for facilities should be included in any CUA that assigns park area facilities to the holder. See NPS 53 for assistance in determining an appropriate facilities fee.

Park area visitors who are transported into the park area by a holder of a CUA are to pay the same entrance and other fees as paid by other park area visitors unless otherwise stated in the CUA in accordance with applicable NPS policy and regulations.



5. The Basics Regarding Annual Overall Ratings

NPS is required to conduct an annual overall rating (AOR) of each concessioner. NPS recently revised its AOR process in 2016 and a notable change was NPS adding “Special Attention Items.” Special Attention Items are key because if a concessioner is found not to be in compliance with any or a certain number of the items, depending on the category being evaluated, its entire AOR score can be greatly impacted.

In its general AOR Evaluation Workbook, NPS lists the following criteria as being “Special Attention Items”:

- All required services were provided by the Concessioner;
- All services provided by the Concessioner were authorized by Contract;
- If a maintenance expense is required, the Concessioner expended the minimum amount required by the Contract during this rating period;
- The Repair and Maintenance Reserve was spent correctly;
- The Concessioner submitted all required franchise fees and required reports on time, including the monthly franchise fee report;
- The Concessioner submitted the Annual Financial Report (AFR) due within this rating period;
- The AFR was audited by an independent licensed or certified public accountant, if required;
- All sub-concessions were approved by the superintendent;
- The Concessioner paid for the utility services provided in a timely manner;
- If a utility add-on was approved, the Concessioner submitted all required reports, including the distribution of add-ons and reconciliation reports;
- All documents, reports, monitoring data, manifests, notices and other documentation required to be submitted to regulatory agencies are submitted on time and in accordance with Applicable Laws. Copies of such communications are provided to the NPS in accordance with the contract. Additional plans, reports, and other documentation are submitted to the NPS in accordance with the contract and RMP;
- Imminent danger and serious incidents are reported to the park in a timely manner in accordance with the contract and RMP;
- Annual reports include internal, park, and other regulatory agency risk data, and are submitted to the NPS in accordance with the contract and RMP;
- Accidents/incidents are responded to in a timely and effective manner;
- The RMP is reviewed at least annually, and updated as necessary;
- The RMP review includes analysis of performance in each RMP element area to determine any systemic program failures (particularly failures that resulted in fatal or serious accidents/incidents or imminent danger hazard deficiencies) and non-

compliance with Applicable Laws;

-Systemic problems are addressed in RMP updates;

-All documents, reports, monitoring data, manifests, notices and other documentation required to be submitted to regulatory agencies are submitted on time and in accordance with Applicable Laws, copies of such communications are provided to the NPS in accordance with the contract and additional plans, reports, and other documentation are submitted to the NPS in accordance with the contract and documented EMP (if applicable);

-Notices of any discharges, release or threatened release of hazardous or toxic substance, material or waste are reported in a timely manner to the NPS in accordance with the contract;

-Any written, threatened or actual notices of violation of Applicable Law from any environmental regulatory agency are reported in a timely manner to the NPS in accordance with the contract; and

-Preventive and deferred maintenance was performed as scheduled in a timely manner.

The importance of being found in compliance with Special Attention Items is shown in the following example. One of the categories evaluated is Administrative Compliance. If the concessioner is found not to be in compliance on 3 or more of the Special Attention Items in the Administrative Compliance category, the concessioner's score for that category is capped at Unsatisfactory. If a concessioner receives an Unsatisfactory in Administrative Compliance or any of the other categories, its final overall annual rating cannot exceed Marginal. If the concessioner is found not to be in compliance with 1-2 of the Special Attention Items in Administrative Compliance, its score for the category cannot exceed Marginal. If a concessioner receives a Marginal in Administrative Compliance or any of the other categories, its final overall rating cannot exceed Satisfactory.

NPS' Annual Overall Rating Workbook User Guide is set out in the following pages and can be found at the following link:

https://www.nps.gov/subjects/concessions/upload/AOR_Workbook_User_Guide.pdf.

March 2016

National Park Service – Commercial Services Program
Annual Overall Rating Workbook User Guide

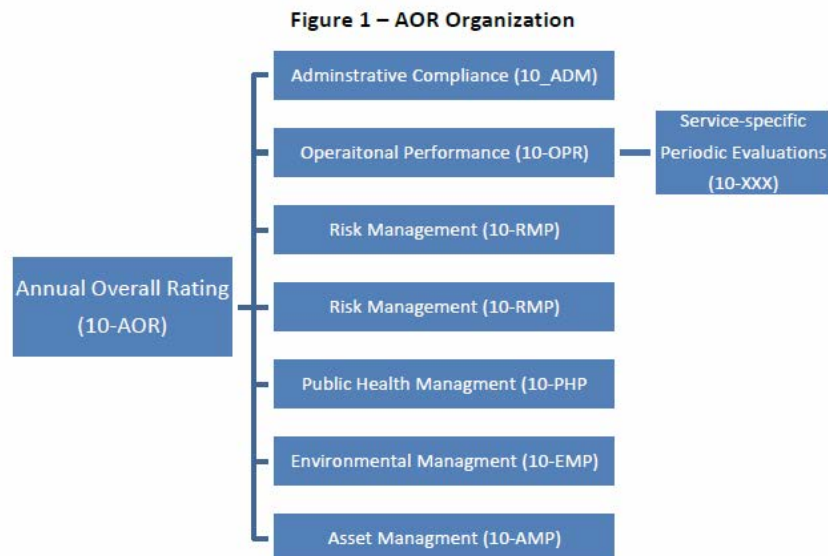
1.0 INTRODUCTION

1.1 Purpose of Annual Overall Rating (AOR)

Through the Concessioner Review Program, the NPS Commercial Services Program (CSP) conducts annual evaluations of each concession operation to ensure that concessioners are complying with their contracts and meet all NPS operational performance, environmental management, asset management, risk management, public health and administrative compliance standards. NPS Commercial Services Annual Overall Rating (AOR) Workbook was introduced in 2016 for use in completing these evaluations and assigning an AOR beginning in Calendar Year 2016. The AOR Workbook tools and processes replace those in NPS 48, Chapters 19, 20 and 21.

1.2 AOR Organization

The CSP AOR Workbook provides a revised organization and revised scoring methodologies for the various AOR evaluation components. Scoring is described in the sections below. The AOR organization is depicted in the Figure 1.



1.2 AOR Tool Format and and Table of Contents

The CSP AOR Workbook (based in Excel) provides user friendly forms for park concession specialists to use in the annual evaluation of concession contracts. The Workbook automatically scores each program area and calculates the annual overall rating that reflects the concessioner's performance for the past year. The AOR Workbook Table of Contents is as follows:

Table of Contents

No. / Form	Page	Description/Responsibility
0	Instructions and Table of Contents	Workbook instructions and table of contents
1	Contract Information	Contract information and evaluation criteria. This must be filled out prior to any other forms.
10-AOR	Annual Overall Rating	AOR Results Summary Page
10-ADM	Administrative Compliance	Evaluation of contract administrative compliance
10-OPR	Operational Performance	Total of service periodic evaluations scores
10-PHP	Public Health	Year-End Summary of Public Health Ratings
10-RMP	Risk Management Program	Evaluation of concessioner's Risk Program
10-EMP	Environmental Management Program	Evaluation of concessioner's Environmental Program
10-AMP	Asset Management Program	Evaluation of concessioner's Asset Program

1.3 AOR Tool Scoring

The CSP AOR Workbook scores concessioner performance based on six program areas: Administrative Compliance, Operational Performance, Public Health, Risk Management, Environmental Management, and Asset Management. Each program area is scored separately in the tool based on performance/compliance against program area elements, and scores are then rolled up into an AOR Score.

Scoring in the Administrative Compliance, Risk Management, Environmental Management, and Asset Management sections are based on the percentage of applicable elements that are in compliance.

Elements marked with an asterisk (*) represent "Special Attention Items". These special attention items have a greater effect on the program area score than standard items. If the concession is not in compliance with any special attention item, the program area score will be penalized and capped at a pre-determined threshold. For exact threshold numbers, refer to the bottom of the page in the corresponding program area. Elements marked with a pound sign (#) represent an item that is not applicable to Cat III contracts.

2.0 DETAILED PROCEDURES

2.1 General Instructions

The evaluator must fill in all yellow highlighted cells on required and applicable forms. When forms are completed, the workbook will automatically calculate the AOR score in the 10-AOR Tab. The evaluator must complete tab "Contract Information" to activate automatic scoring. All pages can be printed for record administration purposes (as necessary).

2.2: Contract Information

The Contract Information tab activates all cells in the Workbook. Filling in this information auto populates the table at the top of all subsequent tabs.

- Fill in the contract information box at the top of the page.
 - Year of Operation (under evaluation)
 - Park (name)
 - Concessioner (name)
 - Concessioner Doing Business As (business name)
 - Contract Number
 - Contract Term Effective Date
 - Evaluator Name
 - Date of Review
- Indicate whether each program area listed is applicable to the contract being evaluated by choosing either Y (yes) or N (no) from the drop down menu.
- Indicate which service types are provided under the contract by checking the boxes in the *Service Types* section at the bottom of the page.
 - To check a box, click the corresponding cell and select "X" from the drop down menu. To uncheck a previously checked box, click the cell again and click the blank option from the drop down menu.

2.3: Program Area Pages

I. Administrative Compliance (10-ADM)

a. Instructions

Table 1: Program Area Evaluation

For each element (row), use the drop-down or type in Column F (yellow) to specify if the element is either 1) in compliance ("Yes"), 2) not in compliance ("No"), or 3) not applicable ("n/a") for the concessioner under evaluation. The evaluator should ensure the form is filled out in order, as some questions may be inappropriately greyed out if the first question in the sequence is left blank.

If an element is not in compliance or not applicable, use the "remarks" box below Table 1 to provide an explanation, justification, or special circumstances. The applicable element ID should be cited next to each remark.

b. Scoring

Scoring is completed automatically based on entries in the form. See notes at the bottom of the tab for information on scoring.

II. Operational Performance (10-OPR)

This tab shows the service periodic evaluation scoring in greater detail.

a. Instructions

Fill in the (yellow) highlighted cells in the table with the following information:

- Location* – Concession location/facility being evaluated
- Service Type* - Service type being evaluated
- Weighting* - Add a weight value based on the importance of the service to the park: 1 = low importance, 2 = medium importance, or 3 = high importance
- Periodic Evaluation (PE) Score(s)* – For each location and service type, enter the PE scores (1-5) from the evaluation year. Up to four (4) PE scores may be entered per location and service

In the event that you need additional rows in Table 1: Facility Evaluation, contact NPSCS to request the addition extra rows. NPSCS will add 100 rows to this table and send it back to you.

b. Scoring

Scoring is completed automatically based on entries in the form. See notes at the bottom of the tab for information on scoring.

III. Public Health

a. Instructions

(1) Fill in *Table 1: Facility Information* with the number of facilities, facility name(s), and any pertinent comments for each facility type listed in the table. If the park has more than one facility of any given facility type, enter all facility names in the same cell separated by a semicolon.

(2) Fill in the yellow highlighted cells in *Table 2: Inspection Information* with the number of Public Health inspections where the concessioner achieved each specified rating (Satisfactory, Marginal, and Unsatisfactory).

(3) Fill in the *Additional Notes / Comments* section with the facility type and name for any marginal or unsatisfactory scores. You may also use this section to justify or explain any non-compliance or non-applicable elements.

b. Scoring

Scoring is completed automatically based on entries in the form. See notes at the bottom of the tab for information on public health scoring.

IV. Risk Management

a. Instructions

(1) Fill out *Table 1 Program Area Evaluations*. Review each element listed and determine if the concessioner is in compliance. A “yes” indicates that the concessioner is compliant with an element and a “no” indicates that there are meaningful deficiencies found. A “meaningful” deficiency is one that is important enough to impair a concessioner’s ability to provide a safe and healthful environment for visitors or employees.

(2) Review the concessioner’s operating plan, identify any unique risk management requirements, and assess compliance to fill out *Table 2: Operating Plan*.

(3) Review the concessioner’s maintenance plan, identify any unique risk management requirements, and assess compliance to fill out *Table 3: Maintenance Plan*

(4) For each requirement in *Table 2: Operating Plan* and *Table 3: Maintenance Plan*, indicate whether or not the concessioner is in compliance by choosing Yes, No, or N/A from the dropdown menu.

b. Scoring

Scoring is completed automatically based on entries in the form. See notes at the bottom of the tab for information on scoring.

V. Environmental Management

a. Instructions

(1) Fill out *Table 1 Program Area Evaluations*. Review each element listed and determine if the concessioner is in compliance. A “yes” indicates that the concessioner is compliant with an element and a “no” indicates that there are meaningful deficiencies found. A “meaningful” deficiency is one that is important enough to impair a concessioner’s ability to provide environmentally sustainable services and facilities for visitors or employees.

(2) Review the concessioner’s operating plan, identify unique environmental management requirements, and assess compliance to fill out *Table 2: Operating Plan*.

(3) Review the concessioner’s maintenance plan, identify unique environmental management requirements, and assess compliance to fill out *Table 3: Maintenance Plan*.

(4) For each requirement in *Table 2: Operating Plan* and *Table 3: Maintenance Plan*, indicate whether or not the concessioner is in compliance by choosing Yes, No, or N/A from the dropdown menu.

b. Scoring

Scoring is completed automatically based on entries in the form. See notes at the bottom of the tab for information on scoring.

VI. Asset Management

a. Instructions

(1) Fill out *Table 1 Program Area Evaluations*. Review each element listed and determine if the concessioner is in compliance. A “yes” indicates that the concessioner is compliant with an element and a “no” indicates that there are meaningful deficiencies found. A “meaningful” deficiency is one that is important enough to impair a concessioner’s ability to provide a healthy environment for visitors or employees.

(2) Review the concessioner’s operating plan, identify unique asset management requirements, and assess compliance to fill out *Table 2: Operating Plan*.

(3) Review the concessioner's maintenance plan, identify unique asset management requirements, and assess compliance to fill out *Table 3: Maintenance Plan*.

(4) For each requirement in *Table 2: Operating Plan* and *Table 3: Maintenance Plan*, indicate whether or not the concessioner is in compliance by choosing Yes, No, or N/A from the dropdown menu.

b. Scoring

Scoring is completed automatically based on entries in the form. See notes at the bottom of the tab for information on scoring.

2.4: Annual Overall Rating (10-AOR)

a. Instructions

The overall rating is a 'roll up' of all tab scores. The score is calculated automatically as tabs are completed. The evaluator must review the annual overall rating with the superintendent. The annual overall rating is approved and signed by the superintendent.

The superintendent has the authority to adjust the AOR rating by one rank in either direction (higher or lower). Please use the space provided to enter the superintendent-approved rating. If the rating has been adjusted from the calculated rating, provide narrative to explain the adjustment. Please see tab "Instructions and TOC" for instructions on signing the AOR.

b. Scoring

The superintendent has the authority to adjust the AOR score, and may do so using this tab.

(1) *Table 1: AOR Score* fills out automatically.

(2) Fill out the superintendent approved rating and narrative sections in *Table 2: Superintendent Approval/Signature*. The evaluator must provide narrative in row 34 to explain any changes to the AOR rating.

(3) Fill out the evaluation narrative for each applicable header (row) in *Table 3: Evaluation Narrative / Comments*. Enter "N/A" for any headers which are not applicable.

2.5: Signed AOR

When the workbook has been completed, the Annual Overall Rating page (10-AOR) must be signed by both the superintendent and the concessioner. To do this:

1. Print the *Annual Overall Rating (10-AOR)* page,

2. Have the superintendent and the concessioner sign the hard copy signature page,
3. Scan the signed document and save as PDF, and
4. Insert the PDF as an image into the *Annual Overall Rating (10-AOR)* tab.

To insert the signed PDF page as an image into this workbook:

1. Open the PDF in Adobe or a similar PDF viewer.
2. Copy the PDF page as an image using one of the following methods:
 - Take a screenshot
 - Use the "Snapshot" tool under the "View" tab (Adobe)
 - Save the PDF as an image file
3. Navigate to the "Signed AOR" tab in this workbook. Select Cell B2.
4. Paste the PDF image onto the page.

For more detailed instructions on printing and scanning, please refer to the *Instructions and TOC* tab in the Workbook.

6. The Basics Regarding Requests for Rate Increases

The NPS Concessions Management Improvement Act of 1998 specifically directs that the concessioner, not NPS, is to set reasonable and appropriate rates to be charged for the services provided by the concessioner.¹² The assessment as to whether the rates are reasonable and appropriate is to be primarily based on a comparison to rates charged by other similar businesses operating under similar conditions, but the law recognizes that operations under an NPS concession contract often may be impacted by different factors than those affecting private operations. Thus, the 1998 Act specifically requires that these differences be taken into account.¹³ The factors which should be reviewed include but are not limited to the length of season, peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, as well as types of patronage.¹⁴ The concessioner's rates must first be approved by NPS which conducts an assessment to determine if they are reasonable based on the above criteria. NPS is required to contract with private companies "to the maximum extent practicable" to conduct or assist in this analysis.¹⁵

The 1998 Act also requires that the NPS rate approval process be "as prompt and unburdensome to the concessioner as possible."¹⁶ The 1998 Act also explicitly states that NPS's review "shall rely on market forces to establish reasonableness of rates and charges to the maximum extent possible."¹⁷ When it implemented the 1998 Act, the House Report noted:

Past problems have been identified in the timeliness of the NPS in approving changes in the rates and charges recommended to them by concessioners. Inaction by the NPS has been especially burdensome to seasonal concessioners where rates and charges are frequently approved after the visitor season has ended. Thus, an expedited process is necessary and it is the Committee's full expectation that the NPS will be able to review and approve concessioner's rates and charges within 15 days of receiving notice of such rates or charges.^[18]

¹² 54 U.S.C. § 101916; 36 C.F.R. § 51.82.

¹³ 54 U.S.C. § 101916(b)(1); 36 C.F.R. § 51.82.

¹⁴ *Id.*

¹⁵ 54 U.S.C. § 101920(a)(1)(D).

¹⁶ *Id.*

¹⁷ 54 U.S.C. § 101916(b)(1).

¹⁸ House Report 105-767. Notwithstanding these statements, NPS's Concession Management Rate Administration Guide (July 2010) states that NPS will "strive" to approve rates within 60 days. Concession contracts may specify a specific timeframe for approval as well.

NPS has issued a Concession Management Rate Administration Guide (February 28, 2017), which is set out in the following pages. The policy manual itself is not legally binding but provides insight into the agency's rate review process. As noted above, the rate review process must nonetheless be consistent with the provisions of the 1998 Act. The policy manual notes that NPS should actively involve the concessioner in the rate approval process, especially in the identification of comparable operations consistent with the statutory conditions noted above. The policy manual also states that an appeal of any final decision by the Superintendent which disapproves requested rate changes can be filed with the Regional Director.

The policy manual is set out on the following pages, and a copy of it can be viewed at <http://www.gardenlawfirm.com/wp-content/uploads/2014/12/Rate-Administration-Guide-2017.pdf>.

Concession Management Rate Administration Guide

February 28, 2017

1. Introduction

2. Rate Administration Program Procedures

- 2.1. Baseline Rates
- 2.2. Rate Method Changes during the Term of the Contract
- 2.3. Rate Changes during the Term of the Contract
 - 2.3.1. Concessioner-Requested Rate Changes
 - 2.3.2. NPS-Initiated Rate Reductions
 - 2.3.3. Programmed Rate Changes
- 2.4. Advance Rates
- 2.5. Rate Request Appeals
- 2.6. Rate Administration Compliance
- 2.7. Qualifications to Perform Rate Approvals and Co-Signers

3. Rate Administration Methods

- 3.1. Rate Method Summaries
- 3.2. Preferred Rate Methods by Service Type
- 3.3. Competitive Market Declaration
 - 3.3.1. CMD Documentation
 - 3.3.2. Monitoring Value for Competitive Market Declaration Services
- 3.4. Comparability Method
 - 3.4.1. Comparability Description and Steps
 - 3.4.2. Comparability Criteria
 - 3.4.3. Unique Comparables
- 3.5. Manufacturer's Suggested Retail Price (MSRP)
- 3.6. Markup Method for Convenience Items
 - 3.6.1. Determining Price
 - 3.6.2. Product Costs and Freight Charges
 - 3.6.3. Variations from Listed Percentages
 - 3.6.4. Grocery and Pre-packaged Food
 - 3.6.5. Rate Methods for the Sale of Mixed Product Categories
 - 3.6.6. Pricing Merchandise without a MSRP or CMD
 - 3.6.7. Markup Method for Fuel
- 3.7. Core Methods
 - 3.7.1. Core Menu
 - 3.7.2. Core Room
 - 3.7.3. Core Retail
 - 3.7.4. Core Services
- 3.8. Financial Analysis Method
- 3.9. Indexing Method

4. Utility Costs

- 4.1. Calculating Utility Add-ons for Contracts Issued Prior to January 31, 2013

4.2. Calculating Utility Add-ons for Contracts Issued After January 31, 2013

4.3. Utility Add-on Management for All Contracts

5. Miscellaneous

5.1. Reduced Rates to Government Employees

5.2. Reservations and Deposits

5.3. Minimum Length of Stay Restrictions

5.4. Third-party Sales, Travel Agencies, and Intermediaries

6. Glossary

1. Introduction

This Concession Management Rate Administration Guide (Rate Guide) provides policies and procedures for concession rate administration by the National Park Service (NPS). The procedures described in the Rate Guide address the NPS requirements under Sec. 406 of Title IV of the National Parks Omnibus Management Act of 1998 as relates to “reasonableness of rates” to the public. The Rate Guide provides details on authorized rate methods and procedures for concessioner rate requests, approvals, and appeals.

This Rate Guide augments and updates the information contained in NPS-48, Chapter 18 and RM-48 Chapter 5, when it supersedes the rate administration information in NPS-48. If procedures in this Rate Guide conflict with NPS-48 or RM-48, the procedures in this Rate Guide take precedence.

This Rate Guide is periodically updated to reflect changes and clarifications in rate administration policies and procedures.

The goal of the NPS Concession Rate Administration Program (Rate Administration Program) is to ensure that rates charged to the public for concessioner-provided facilities and services are fair to concessioners, reasonable for visitors, and set in accordance with law and policy. The procedures described in this guide provide an analytical process to review and approve concessioner rates in a manner that is as prompt and unburdensome as possible and achieve the following objectives:

- Produce defensible and reliable results.
- Rely on market forces and reflect the competitive marketplace.
- Address the unique factors and requirements of concession facilities and services.
- Ensure a consistent Service-wide approach.
- Provide a professional process for parks.

The various responsibilities of entities involved in the Rate Administration Program are outlined in NPS 48/RM 48. The methods and procedures for accomplishing these responsibilities are identified and discussed in more detail in the Rate Guide.

Throughout the Rate Guide, the term “concession specialist” is used to refer to the park employee(s) responsible for managing the concession contracts. This includes full time concession specialists, other concession management positions, and collateral duty employees with concession management responsibilities.

3. Rate Administration Program Procedures

This section defines the administrative procedures for:

- Setting initial rates.
- Changing rate methods.
- Addressing rate requests.
- Conducting rate reviews and approvals.
- Managing rate appeals.

The superintendent is the primary authority for determining rate methods and approved rates for concession products and services, supported by park concession specialists. The region, and in some cases the Washington Support Office (WASO) or third-party hospitality consultants, may also provide assistance as needed.

2.1. Baseline Rates

During prospectus development, NPS personnel (park, region or WASO) or hospitality consultants should use their expertise to conduct a comparability study, including an initial analysis of:

- Types and category (i.e., classification level) of services.
- Applicable rate methods.
- Potential and actual comparables.
- Appropriate rates.

The results from this analysis are incorporated into the concession contract operating plan to establish the applicable rate methods, comparable operations, and approved rate schedules for the first year of the contract (or multiple years of the contract if an indexing method is used). The consultant or NPS personnel will also use this information in the prospectus financial analysis.

2.2. Rate Method Changes during the Term of the Contract

The superintendent may change the rate method used to approve rates during the term of a contract to reflect changes in market conditions, concession operations, or policies. For example, the superintendent may determine that a more streamlined process such as core services rather than full comparability can be employed for a particular service and still ensure fair pricing for visitors. Conversely, the superintendent may determine that a more flexible rate method (such as competitive market declaration) is no longer working to provide fair rates for visitors and as a result, change the rate approval method to one that provides more oversight (such as comparability). The park should consult with their regional office when considering such changes to the rate methods.

The park should conduct an analysis for such changes in rate approval methods, discuss any changes with the concessioner so they understand the reason for the change, and document the changes in the operating plan. Concessioners must have adequate time to implement the rate administration changes, typically several months before the concessioner's rate request is due.

Exceptions are when rate method changes are necessary on a more expedited timeline to address significant rate fairness issues. In such cases, the park may change the rate methods within the same operating season.

The concessioner may also propose changes in rate methods. Such proposals must include documentation with analysis and justification demonstrating how the new method will improve processes for the park and concessioner while providing fair rates to visitors.

2.3. Rate Changes during the Term of the Contract

The superintendent may approve changes to rates during the term of the contract to reflect changes in the market or concession conditions. The most common trigger for a rate change consideration is a request from the concessioner. There may also be occasions when the park determines there is a need for a rate adjustment. Additionally, some rate methods include a programmed rate change. Processes for each of these are outlined below.

2.3.1. Concessioner-Requested Rate Changes

Rate Request Timeline

The park must establish a timeline for when the concessioner may submit requests for rate changes beginning in the second year of the contract. The timeline should:

- Provide a logical, realistic time frame for completing the necessary research, analysis, document preparation, and reviews.
- Consider the need for concessioners to prepare advertising materials and public rate schedules.

Parks with multiple concession operations should consider staggering rate request timelines to help the park meet appropriate response times.

Written Rate Request

Concessioners must request rate changes in writing and in accordance with the rate request timeline. The requests must include sufficient detail and documentation to justify the requested rate. Documentation may include:

- Information on the concessioner's proposed rate methods.
- Proposed rates.
- Rate comparables.
- Financial analysis.
- Other information the concessioner believes should be considered in accordance with law.

Out-of-Cycle Rate Increase

Concessioners may make special rate requests outside of the annual timetable for products or services due to special events, unexpected changes, or emergencies.

In certain cases where expedience is necessary, concessioners may make approval requests via telephone. A written request must follow all telephone requests documenting the justification for the rate change.

Park Review and Approval

Concession specialists must review concessioner rate requests to determine if the requests are justified. The specific review procedures will vary depending on the type of rate method used and may include the completion of a rate comparability study, calculation using Consumer Price Index (CPI) data, or other actions. If the concessioner's request requires additional review or input, regional or WASO Commercial Services personnel can provide technical assistance.

The concession specialist should review the rate request and provide a written recommendation to the superintendent stating whether the rate should be approved (i.e., the concessioner's rate request is justified) or denied (i.e., the concessioner's rate request is not justified). The concession specialist may also recommend approval of a modified rate schedule that provides a rate increase lower than the concessioner requested.

Documentation must fully support the recommendation and include a format that outlines the procedures followed in reviewing the concessioner's rates and in analyzing the supporting documentation and data. For the benefit of the superintendent, the recommendation should also include an executive summary of the results of the review.

It is important that responses to concessioner rate requests are timely. Parks should strive to complete the rate review within 60 days, except in unusual circumstances. Parks should communicate the schedule to the concessioner, and include it into the operating plan. If a park is unable to complete its review because the concessioner provides insufficient information, the park should request additional information from the concessioner and reestablish an appropriate response schedule.

The concession specialist should prepare the approved rate schedule based on the rate request decision and include specific, adequate information to ensure all rate factors are documented and understood. Elements may include:

- Menu items
- Room types
- Seasonal or holiday/special event rates
- Deposit and cancellation policies
- Group/package rates
- Reduced rates for federal employees
- Other factors to show what is provided for the price charged

The superintendent must sign and date the approved rate schedule and provide a written copy to the concessioner, which includes *"These rates are to remain in effect until specific changes are approved by the superintendent"* at the bottom of each page.

If the superintendent denies or modifies the concessioner's rate request, the park must inform the concessioner and provide appropriate justification.

Annual Overall Rating Requirement

Concessioners should not receive approval for a rate increase if they have an Annual Overall Rating (AOR) score of marginal or unsatisfactory. Such scores represent failure for the concessioner to substantially meet visitor service standards and/or administrative requirements. Exceptions may be granted by the Superintendent if the concessioner demonstrates rates are significantly below market pricing; however, even in these circumstances, approval for the full request to bring them to an industry standard should not be provided until the concessioner's performance is improved to satisfactory.

2.3.2. NPS-Initiated Rate Reductions

The NPS typically relies upon the concessioner to make rate change requests when they feel it is justified and does not routinely initiate rates changes during the term of the contract.

However, the NPS may determine, based upon completion of a rate study or other comparability data, that rates for a service should be lower than the currently approved rate. In circumstances where there is reasonable evidence that rates are likely to recover, the superintendent may deny any rate increases until comparable rates have caught back up. In situations where economic circumstances demonstrate the rates will be lower than those currently approved for an extended period, the superintendent may approve a rate reduction to ensure compliance with comparability requirements under the law and fairness to the visitor. The concessions specialist must consult with the regional office before reducing rates so they can provide guidance and be prepared for any potential appeals from the concessioner.

2.3.3. Programmed Rate Changes

Rate methods for some services establish an annual rate adjustment based upon an index such as the Consumer Price Index (CPI). If such indices indicate a rate increase, the increase is not automatic. The concessioner must still formally request a rate change and provide index data demonstrating the justification for the rate adjustment. If the index indicates a rate reduction, the park should hold or reduce rates as outlined above.

2.4. Advance Rates

Parks typically approve rates before the start of the peak visitor season. However, concessioners can accept reservations up to two years in advance. To account for potential rate increases beyond the current year's approved rate schedule, the concessioner may request an "advance rate" approval.

Advance Rate Request

Concessioners must request written permission to charge advance rates. The concessioner is responsible for providing adequate documentation to justify the rates they are proposing. In accordance with statutory requirements, this supporting documentation must be based on comparability. Documentation may include data from comparables which documents their

advertised or projected rates for the advance period or rate trend data for the comparable property. Concessioners may use industry indices or trend reports to justify advance rate requests. Such indices and reports for the lodging industry include CPI, Smith Travel Research, and PKF/CBRE reports.

The superintendent must approve all advance rates before they are advertised or charged. If a concessioner provides unjustified data, or if the park demonstrates the rate request is not justified, the superintendent may approve a lower advance rate. The superintendent should deny an advance rate increase if research and analysis indicate market conditions will deteriorate and the advance rate may fall below the current year's rate.

Managing Advance Rates

If the final approved rate for the season is lower than the advance rate, the concessioner must refund the difference between the advance rate deposit and the actual rate deposit to the park visitor. If the final approved rates are higher than the advance rate, the concessioner must honor the advance rate for the entire length of stay.

The concessioner must develop procedures to manage the advance rate process and provide them to the park for approval. Concessioners must provide accounting and tracking documentation to the park upon request, and clearly disclose their refund policy regarding advance rates to customers at the time of reservation and at the time of stay.

Concession specialists must periodically review the concessioner's advance rate processes to ensure the concessioner is conducting customer disclosures, charging correct rates, and issuing any applicable refunds.

2.5. Rate Request Appeals

If a concessioner disagrees with the findings of a rate review, there is a right to appeal. The superintendent should make reasonable efforts to work out the disagreement with the concessioner, before processing the appeal. Appeal reviews must occur in a timely manner.

Steps for Appealing a Rate Request:

1. The concessioner writes a letter of appeal to the superintendent stating the concessioner's desire to appeal to the regional director. The letter must clearly state the concessioner's objection to the rate study determination and include sufficient data to support the objection.
2. The superintendent forwards the letter of appeal to the regional director in a timely manner.
3. The park provides comments relating to the concessioner's objections and supporting information to justify the park's position relating to each issue of the appeal.
4. The current rates for the services in question remain in effect until the regional director renders a decision, which is final.

5. The regional director returns their decision to the concessioner in writing, through the superintendent.

If the regional director overturns the superintendent's decision, the memorandum becomes an amendment to the park's approved rates.

2.6. Rate Administration Compliance

Park personnel are responsible for approving concessioner advertising containing rate information, performing rate checks several times per year, and ensuring the concessioner's quality and standard of services align with their rates. These procedures are part of the the NPS Concessioner Review Program which is outlined in NPS 48/RM 48.

2.7. Qualifications to Perform Rate Approvals and Co-Signers

Personnel who conduct rate reviews and oversee rate compliance are required to hold NPS Commercial Services Evaluation and Pricing (E&P) Training certification. E&P recertification is recommended every five years.

A cosigner is necessary if the concession employee (collateral duty or full time) conducting rate reviews has not completed E&P training. Personnel certified through E&P training do not need a cosigner but may still request one. The regional office can assist the park in identifying a possible cosigner.

The cosigner provides support and advice to the park reviewer to ensure the rate analysis is valid and supports recommendations. To qualify as a cosigner, the employee must have at least three years of experience conducting rate studies following successful completion of E&P training.

Cosigners must be full-time concession management personnel and be familiar with the park and concession operation in question. Cosigners may be personnel from other parks, regional offices, or WASO. Studies are considered invalid when conducted by anyone without the proper training and experience.

3. Rate Administration Methods

3.1. Rate Method Summaries

This section includes summaries of the various approved rate methods. Detailed procedures for each method follow in Sections 3.3 – 3.9.

Competitive Market Declaration

Competitive Market Declaration (CMD) is the rate approval method with the least administrative burden for the park and concessioner. This method utilizes a written statement to document that the concessioner is in a competitive market for a specific service and allows the concessioner to price accordingly. This method assumes there is significant external competition so the concessioner sets their rates based on market pressure and pricing of a

specific item or service is not influenced or enhanced by a specific NPS area. These conditions are most commonly seen in urban areas and parks with nearby gateway communities.

CMD is the preferred rate method for merchandise items that do not have a manufacturer's suggested retail price (MSRP). CMD may be used for other products or services where there is a competitive market. When applying this method, particular care must be taken where the service is more critical to visitors, such as lodging or food and beverage.

Comparability

Comparability is the fundamental rate setting method. It is also the method with the highest level of effort to establish and oversee rates. NPS personnel use this method to compare concession facilities or services to similar offerings outside the park, and apply it when other simplified methods are inappropriate or inadequate. This method is most often used for:

- Lodging
- Campgrounds
- Marinas
- Tour operations
- Fuel
- Guides and outfitters

The comparability method consists of two levels - full review and limited review. The full review requires the NPS to collect information by visiting nearby businesses that are similar and potentially comparable to the concession operation. NPS personnel analyze the information and select the properties determined to be most similar as actual comparables in the assessment of the concessioner's rate request. The limited review process is similar to the full review process, except the data is collected remotely via telephone, internet, or correspondence.

Manufacturer's Suggested Retail Price

MSRP is the preferred method for merchandise and convenience items *that have pre-printed prices* on them. MSRP is the pre-printed price the manufacturer recommends the retailer uses to sell the product. Products that have an MSRP should be priced at that rate. All other items without an MSRP may be priced using CMD or markup, as appropriate.

Markup

The markup rate method is the preferred method for pricing *convenience items* that do not have an MSRP. Convenience items are products that are generally consumed regularly and viewed as *necessities*. Examples include:

- Ice.
- Packaged food.
- Personal care products.

This rate method uses industry gross margins by product category obtained through data from by the National Association of Convenience Stores (NACS) that is distributed by the NPS Commercial Services Program annually. Markup percent is the percent of total cost that is profit. The application of this method involves pricing items using the concessioner's documented product cost multiplied by the applicable percentage.

Core Methods (Core Menu, Core Rooms, Core Retail, Core Services)

The core methods allow parks to simplify the rate administration process by using different rate methods for products or services that have core and non-core offerings. The park decides which products or services are "core" to the operation and prices those using the comparability process, while the concessioner prices the non-core products based on what the market will bear.

The core method is the preferred method for lodging, food and beverage, and convenience items, and may be applicable to other services where there are differentiated offerings.

Financial Analysis

This method provides a process for calculating rates at the beginning of a contract using a financial analysis and annually adjusting them by an index. It is intended for use when:

- Comparables are not available.
- No other rate method can be used.
- There is a need to account for unique aspects of the business that other rate methods cannot address.

The method may be useful for unusual services such as seaplane rides, mountaineering services, bathhouses, ferry services, or river running operations.

Indexing

Rates may be approved by using CPI or other indexes. Indexing is not a stand-alone rate method; rather it is used to update rates set by other methods (comparability, financial analysis).

Other Methods

The NPS continues to investigate ways to reduce the rate approval burden to parks and concessioners while still meeting the requirements of the laws and objectives of the Rate Administration Program. The park and the concessioner, in consultation with the regional office and WASO Commercial Services, may choose to pilot methods that meet these requirements. WASO Commercial Services may be available to provide technical assistance in such pilot efforts.

“AMENITY ADJUSTMENT” PILOT

Some parks have been piloting a new method for setting rates for lodging that uses comparability to set the rate for a “standard” room type and then adjusting rates up or down for other room types based on what amenities are provided (balcony, view, fireplace, etc.). These amenity adjustments can be based on the concessioner’s historical rate differences or the comparables’ rate differences in room types.

Interested in piloting this method?
 Contact your regional office.

3.2. Preferred Rate Methods by Service Type

The table below identifies the preferred and alternate rate methods by service type.

SERVICE TYPE	APPROVED RATE METHOD(S)	
	Preferred	Alternative
Lodging	Core (Room)	Direct Comparability Financial Analysis Competitive Market Declaration
Food & Beverage	Core (Menu)	Direct Comparability Cost of Goods Competitive Market Declaration
Retail- Convenience	MSRP/Core Markup	MSRP/Full Comparability Competitive Market Declaration
Retail- Merchandise	MSRP/Competitive Market Declaration	Direct Comparability
Fuel	Direct Comparability	Fuel Markup Competitive Market Declaration
Other Services	Core (Services)	Direct Comparability Financial Analysis Competitive Market Declaration

3.3. Competitive Market Declaration

The Competitive Market Declaration (CMD) rate method should be used for all *merchandise items* without MSRPs. Merchandise items are manufactured or handcrafted items that are not considered necessities, such as coffee mugs, key chains and toys. Given the non-essential nature

of merchandise and the availability of similar products in areas outside the park and online, merchandise in all parks can be priced using CMD without having to provide the written documentation and justification below.

CMD may be used for other services **only** if one of the following situations applies:

5. **Competitive Market** - A competitive market requires the concessioner to compete with other businesses, which ensures market pricing. For example, a concession restaurant in a park may compete directly with other nearby restaurants and have little or no competitive advantage due to location. Similarly, a retail store may find it competes with other shops locally, regionally, or even nationally (i.e. internet) for similar goods and must set prices consistent with these businesses.
6. **No Competitive Advantage** - The sale of art may derive little or no competitive advantage from being in a park, since individuals often travel substantial distances to obtain these items and the place of purchase is less important than the character of the item. On the other hand, a marina that provides the only access to a body of water enjoys a substantial competitive advantage and should not use CMD.
7. **Prices Routinely Negotiated** - The price of consignment items, antiques, boats, and many other products is often negotiated between the buyer and seller.

3.3.1. CMD Documentation

The park must document the decision to use CMD for anything other than merchandise, and include the declaration in the approved rate schedule. The format of the declaration may be adjusted to meet individual needs. However, it should include at a minimum, a statement to the effect that:

1. The concessioner operates in a competitive market and derives no advantage from being in the park.
2. Competitive market forces are the determining factor of the concessioner's rates.
3. The concessioner may adjust rates without the specific approval of the superintendent, but rates are subject to review to ensure they remain reasonable in comparison to similar services offered outside the park.
4. An annual review of the declaration is necessary and the park may rescind the use of this if the situation changes.

Competitive Market Declaration Examples

Example One: Guided Hiking

The Zion Lodge offers guided hikes inside the park. There are ten Commercial Use Authorization (CUA) companies that also offer similar guided hikes inside the park, as well as numerous guided hiking opportunities just outside of the park.

The use of CMD for guided hikes is appropriate. The concessioner can adjust rates without the specific administration of the superintendent, but they are subject to review to ensure they remain comparable to similar services offered outside Zion National Park. The decision to change

rate administration methods lies with the superintendent, who reviews the declaration annually to determine if rescinding the use of this method is warranted.

Sample CMD Statement:

Example Two: Specific Convenience Item

Zion Gifts prices convenience items according to the markup rate method. However, the price of batteries set using the markup method is much lower than the prices at the competitors' shops. Since this price is out of sync with the local market, the concessioner has requested a markup waiver for this item and the superintendent has approved the use of CMD for batteries.

Sample CMD Statement:

3.3.2. Monitoring Value for Competitive Market Declaration Services

While CMD streamlines the rate approval process, it is still important for the park to monitor the value of the products and services the concessioner provides. Even in a competitive market, the park location may provide concessioners a unique advantage and ability to charge rates higher than their competitors. The concessioner might increase the quality of their offerings so the service is of a higher standard than was intended by the park, and therefore justify a higher market-based rate. To ensure appropriate value, parks should periodically check the quality of services a concessioner offers against market rate comparables and the NPS standards for the category of service specified in the contract. As indicated above, if there are concerns, it is appropriate to discontinue the CMD method for merchandise or other services. These potential concerns apply not only to the CMD rate method, but also to other rate methods that allow for market pricing, such as the core methods.

3.4. Comparability Method

3.4.1. Comparability Description and Steps

The comparability method is primarily used for lodging, campgrounds, marinas, tour operations, fuel, and guides and outfitters. The purpose of the comparability method is to correlate the concessioner's rates to similar operations in the competitive marketplace. Establishment of the concessioners' approved rates under this method involves:

- Identifying comparable businesses that are similar to the concessioner's operation.
- Analyzing the concessioners' rates against the rates of the comparable businesses, taking into consideration operating differences.

The **full review** process requires an onsite visit to collect data. Typically the full review is used for more complex operations such as lodging, large marinas, and other operations where a thorough inspection of operating conditions is important to evaluate comparability.

The **limited review** process permits the collection of the same data by telephone, internet, or other correspondence, and is typically used for smaller, less complex operations such as fuel, firewood, laundry, showers, and small boat rentals, or when updating a full review.

Parks should complete a comparability review (full or limited) every fifth year of the contract at a minimum. If no significant changes have occurred in either the operating conditions of the comparables or the concessioner, a limited review may be appropriate. Under certain circumstances, however, it may be necessary to conduct a full review prior to the fifth year. For example, a full review must be completed:

- Prior to the start of a new contract.
- When an assignment or encumbrance transaction occurs.
- When major renovations have been completed.
- Upon a change in service levels or facility classification.
- Upon any substantive changes to comparable properties.

During the interim years, a limited review or indexing may be used to adjust the rate. Indexing is preferred because it reduces the administrative burden on the park and concessioner.

Concession specialists must follow the following steps when conducting a **full review**. When conducting a **limited review** as a stand-alone process, steps 3 and 4 are unnecessary. These processes provide a straightforward, reliable and defensible comparability methodology. Several tools have been developed to aid in some of these processes. Parks may request to help pilot such tools through their regional concession office.

1. **Determine Study Level** - Is it a full or a limited review?
2. **Develop a List of Potential Comparables** - If it is a new review, the concession specialist *and* the concessioner should work together to develop a list of potential comparables. Involving the concessioner at this stage can eliminate potential conflict later. Comparables should be in an area that is free and unencumbered by permits and restrictions. Ownership of the comparable should be different from that of the concession operation. In some situations, it is necessary to use comparables that are hundreds of miles away because they are so rare. However, if a proposed property is a substantial distance (i.e., several hundred miles) from the park and there are sufficient comparables closer, the property should not be used.
3. **Contact Potential Comparables** - As a courtesy, the concession specialist should contact potential comparable businesses via email or phone, explaining the reason for contact and method used to review concessioner rate requests. The concession specialist should request permission to visit the property and collect basic information and may suggest a date and time for the visit. Few operators decline to assist when approached in this manner.
4. **Visit Potential Comparables** - Visits must be conducted in a professional manner with necessary aids to ensure accurate data collection. The concession specialist may invite concessioners to accompany them on these visits. Preparing a form in advance makes information collection easier. This form may include a space for information on each of the criteria and notes about Extra Quality Features (discussed later in step 7). It is important to document the visit with thorough notes and photographs to record exterior and interior conditions.
5. **Compile and Analyze Data Collected (Comparability Matrix)** – The concession specialist must compile and analyze all collected information in a comparability matrix (sample provided on

the following page). When executed properly, this results in the best possible selection of actual comparables. The comparability matrix uses the comparability criteria identified in Section 3.4.2 to provide an objective approach for determining which properties are selected as actual comparables. When completed, this matrix notes the degree of similarity between the concessioner and the potential comparables. The matrix does not designate the properties as better or worse, but only shows the degree of similarity.

When completing the comparability matrix, it is critical for the same person(s) to evaluate all the properties in the matrix for consistency. Concessioners do not participate in the matrix process. The concessioner is listed first on the matrix and is automatically assigned a value of 10 points for each criterion. In a lodging matrix, there are seven criteria, so this format results in a total of 70 points for the concessioner (10 x 7 = 70). In other matrices, the total score may be different (based on the number of criteria in each matrix), but the concessioner always receives the full points value for that matrix since they provide the base on which all the potential comparables are compared.

For each of the criteria analyzed, the concessions specialist should devise a point spread that reflects the differences between potential comparables. For example, if a concessioner has 100 guest rooms, a potential comparable should have 50-150 guest rooms to receive 10 points. In cases where the comparable is not similar to the concessioner, it may result in a score of either five (partially the same) or zero (completely different). To further distinguish between comparables, it is also appropriate to use numbers between 1-4 and 6-9.

Sample Matrix

	Concessioner	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Comp 6
Competition							
yes (10)	10	10	10	10	10	10	10
Seasonality							
seasonal (10)	10			10	10		10
year-round ((5)		5	5			5	
Similar Area							
remote (10)	10	10		10	10	10	
rural (5)			5				5
urban (3)							
Similar Clientele							
vacationers (10)	10	10	10	10	10	10	
mix (5)							5
business (1)							
Occupancy							
> 80% (10)	10	10			10	10	10
50%- 79% (5)			5	5			
<49% (1)							
Facility Characteristics							
Building Type							
cabins/duplexes (4)	4	4	4	4	4	4	
low rise hotel/motel (3)							3
high-rise (2)							
Facility Age							

1949 or older (1)			1	1			
1950-1970 (2)					2		
1971-2000(3)	3	3				3	3
2001 or newer (2)							
Construction Type							
wood (3)	3	3	3	3	3	3	3
masonry (2)							
other (1)							
Similar Size (# of rooms)							
24 or less (5)		5	5			5	
25-50 (10)	10			10	10		
50-100 (5)							5
101-200(1)							
Total Comparability Score 70 60 48 63 69 60 54							

6. **Select the Actual Comparables** – The concession specialist must select actual comparables after the analysis. In general, there should be at least three actual comparables. Throughout this document whenever the term comparables is used, it refers to actual comparables. When referring to potential comparables, the whole term is used. After the concession specialist completes the matrix and the points are totaled for each property, he or she should look for a natural break in the point spread and selects all properties above that number as actual comparables. In the previous sample, a natural break point seems to be at 60 points, so the park would select Comps 1, 3, 4, and 5 as actual comparables. If a break level is not apparent or provides too few or too many properties, the concession specialist should select an appropriate number of properties from the list.
7. **Conduct an In-Depth Analysis of Comparables** - This step focuses entirely on the comparables selected. The concession specialist must review the information, including other factors deemed significant and Extra Quality Features (EQFs), as part of determining where the concessioner falls among the range of the comparables. EQFs are additional attributes and amenities that add value to the operation, such as televisions, internet, pools, and on-site restaurants for a lodging operation.

Sample lists of EQFs for various service types are available on the [SharePoint Contract Management Toolbox](#). This step helps the concession specialist determine where the concessioner’s operations lie in relation to the range of quality and types of services or facilities the comparables offer. To make this determination, the analysis must compare and appraise the level of EQFs in both concessioner and comparable facilities. These features generally add operating costs and value to the customer. The review may be a simple comparison of the concessioner’s EQFs against the corresponding lists of the individual comparables, taking into consideration that all EQFs are not valued equally.

The concession specialist should prepare a narrative that summarizes the comparables’ EQFs and other criteria for each specific type of facility or service. The narrative should enhance the reader’s knowledge of the property and add value to the matrix comparison.

8. **Collect and Analyze Rate Information** The concession specialist must collect rate information for each comparable. When comparables offer various rates for the same offering (i.e., lodging room rates), the park should use the peak rate for comparison. The peak rate is

considered the highest rate the operation charges for the season, not including special events, holidays, discounts, or other restrictions.

In lodging, this may be considered the “rack rate.” If a comparable is unwilling or unable to provide its peak rate, “rate shopping” is necessary. This requires searching the comparables via an online reservation system (or calling the reservation desk) to determine the peak rate. It may be necessary to search a variety of days (weekdays and weekends) and seasons to determine an accurate peak rate.

After EQF comparisons, the concession specialist can make a logical determination of where the concessioner fits in among the comparables in respect to service, condition of facilities, and attention to detail. **It is important not to average rates to find the approved rate.** Rather, the approved rate should fall within the range of property rates to which the concessioner is most comparable.

For example, the comparables from the previous example charge the following peak rates:

Comp 1	\$145.00
Comp 3	\$175.00
Comp 4	\$160.00
Comp 5	\$167.00

If the EQF analysis shows the concessioner belongs between Comp 3 and 5, the approved rate should fall between \$167 and \$175 (not the average rate of the four comps, or \$161.75). If the concessioner’s rate request is \$170, the park should approve the rate. If the concessioner’s rate request is \$180, the park should approve a maximum rate of \$175.

Depending on the operating conditions of the concession operation and its comparables, rate approvals for various seasons or special events (i.e., festivals, holidays, natural phenomenon) may be appropriate. For example, a park with obvious visitation patterns may wish to set peak season, shoulder season, off season rates, and special event rates if comparable operations have similar rate trends.

The park and concessioner should work together to identify any additional rate seasons that exist in the market and the dates that the additional rates will be used for. When using this type of rate stratification, it is important that the park and concessioner consider all rate seasons (off season, shoulder season, etc.) and not just those that will result in higher rates. In considering the number of different rates to approve, the park must balance the legal requirements of ensuring comparable rates with the available resources to review and approve rates in a complete and timely manner.

3.4.2. Comparability Criteria

Concession specialists should use the following criteria to determine comparability. Criteria are weighted equally when completing the matrix and each criterion is worth 10 points. For example, lodging has seven applicable criteria for a total of 70 points.

Concession Type	Criteria Number	Total Points
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Lodging	1-2-3-4-5-6-7	70
Food and beverage	1-2-3-7-8	60
Campgrounds	1-2-3-5-7-9	60
Marinas	1-2-3-7-10-11	60
Tours	1-2-3-12-13	50
Gasoline stations	1-2-3	30
Other Services	1-2-3-12	40

Comparable operations should be as similar to concessioner operations as possible. Parks examine the degree of similarity between potential concession operations and the concessioner for each criterion, and apply a score based on their findings. The specific criteria are:

1. **Competition (all services).** Comparable operations must have at least one competitor engaged in a similar operation (service, classification) in the immediate area. Two or more comparable operations are ideal. This ensures greater accuracy and fairness in pricing administration. The only possible point score for this criterion is 10. If there is competition, the park awards a score of 10. If there is no competition, the comparable may not be used.
2. **Seasonality (all services).** Comparable operations should have similar operating seasons in relation to the concessioner. Typically, this is scoring year-round vs. seasonal operations.
3. **Similar Area (all services).** Comparable operation should be located in an area similar to the concessioner. Possible locations include remote, urban, suburban, mountain, beach, etc.
4. **Similar Clientele (lodging).** Comparable operations should serve a similar clientele to the concessioner. The concessioner serves the vacationing public almost exclusively. Comparables that serve a significant percentage of corporate or convention business operate differently and may have different costs and revenues than more tourist-oriented facilities.
5. **Occupancy Rate (lodging, campgrounds).** Comparable operation occupancy rates should be similar to the concessioner's occupancy rate.
6. **Facility Characteristics (lodging).** Comparable operations should share certain characteristics with the concessioner, including age, construction material, and building type. Building types can include high-rise (three stories or higher), low-rise (two story), single-story, cabins, etc. These factors are important when comparing facilities to measure the similarities in construction and maintenance costs between facilities. For this criterion, the park divides the ten points into the three facility characteristics factors. For example, the park may choose to make age worth four points, and construction material and building type each worth three points.
7. **Similar Size (lodging, food and beverage, campgrounds, marinas).** A comparable should be similar in size to the concessioner (similar number of lodging rooms, restaurant seats, campground sites, marina slips, etc).
8. **Similar Classification and Number of Meals (food and beverage).** Comparable operations should have a similar classification and serve a similar number of meals as the concessioner

operation. Examples of classification include fast casual, family casual, and fine dining. Examples of number of meals include breakfast, lunch, and dinner.

9. **Site Type (campgrounds).** Comparable operations should offer similar site types to the concessioner operation. This includes campgrounds that may provide areas to accommodate RV users or tent campers, or a combination of the two.
10. **Similarity of Operations (marinas).** Comparable operations offer similar amenities to concessioner operations. This includes criteria such as length of boats, types of boats and utilities.
11. **Construction Characteristics (marinas).** Comparable operations are constructed of similar materials to concessioner operations. This can include the construction type and materials of the dock (floating, pilings, metal, or wood), weather protection, and breakwater.
12. **Similarity of Operations (tour operations, other services).** Comparable operations should offer similar services as the concession operation. This may include using similar types of equipment, offering similar services, or having similar facilities. For example, concessioner and potential comparables for a tour operation should use a similar type of equipment (car/van, bus, tram, boat) and preferably the same type of power and fuel. These affect the initial investment and ongoing operating costs for various kinds of equipment. Additionally, the concessioner and the potential comparable should provide the same type of guide service, whether live narrative or tape recording.
13. **Tour Length (tour operations).** Comparable operations should offer similar tour lengths to concession operation. For example, two-hour, half day, or full day tours. It is not advisable to compare extended tours with tours of a short duration because fixed costs will vary.
14. **Locally Important Criteria (optional).** Due to the wide variety of services and activities unique to parks, the concession specialist may identify certain local criteria for comparability. The criteria should specifically identify the desired levels of service or equipment.

3.4.3. Unique Comparables

Other Government Agency-Managed Properties

While it is not prohibited to use other government agency-managed commercial operations as comparables, it is not preferred because of the potential for these facilities to operate under conditions that prevent them from operating competitively. Concession specialists may use other government agency-managed properties when they cannot find an adequate number of acceptable non-government managed businesses.

The government-managed property must establish their rates competitively (i.e., rates are not set or financially regulated by a governing agency) and the contract or other operating requirements imposed by the federal agency must not prevent the business from acting like an unencumbered commercial operation. The concession specialist must investigate and document these items.

Operations from Other Countries

Using commercial operations from other countries as comparables is allowed, but should only be used when an adequate number of domestic comparables are not available for comparison. While foreign facilities may provide similar services in similar environments (and therefore seem like a reasonable comparable), certain factors can make them unsuitable. These factors may include different operating and regulatory environments, financial exchange rates, and local economies. Non-domestic locations where these factors are not significant and provide reasonable comparables include U.S. Territories, Canada, and the Bahamas.

In all cases, when using non-domestic comparables, concession specialists must take the foreign exchange rate into account in the rate determination.

Operations Located on Park Inholdings

It is acceptable to use commercial operations on NPS inholdings as a comparable. Concession specialists must ensure the operation meets the comparability criteria, including whether the property's rates were established competitively and whether its presence within a park inholding imposes operating requirements that prevent the business from acting like an unencumbered commercial operation.

Chain Establishments

It is not preferable to use chain hotels (Best Western, Hilton, etc.) or restaurants (Applebee's, Chipotle, etc.) as a comparable, particularly if an adequate number of independent operations are available. The operating costs for chain establishments are often lower than a concessioner's operating costs, making them unsuitable candidates for comparison. If chain properties must be used because other comparables are not available, they should not comprise more than half of the comparables.

Concession specialists should consult their regional office for guidance if they are unsure about the use of a particular property. In the event that such comparables are used, the concession specialist must maintain documentation demonstrating the need for using these comparables.

3.5. Manufacturer's Suggested Retail Price (MSRP)

Manufacturer's Suggested Retail Price (MSRP) is the preferred rate method for merchandise and convenience items if the MSRP is pre-printed and clearly indicated on the product and the use of such pricing is standard industry practice. Items that are typically sold at a factory printed price include magazines, books, newspapers, candy bars and snack foods.

Additionally, merchandise items such as clothing procured by a supplier with a pre-printed tag may also be priced using the MSRP. If requested, the concessioner must be able to demonstrate the items are commonly sold at MSRP.

As with the other rate methods, MSRP is the maximum rate approved, and concessioners may choose to charge a lower price. Concessioners may use markup or CMD when MSRP is:

- Not provided on the product.

- Not commonly used for pricing in the industry.
- Otherwise determined to be inappropriate.

For example, for backcountry operations where there are significant transportation costs to provide items to the backcountry operation, the MSRP method may not be appropriate. Instead, to account for and include freight costs in the final price, it may be appropriate to use the markup method instead.

3.6. Markup Method for Convenience Items

The markup rate method is used for *convenience items* that do not have a MSRP. Convenience items are products that are consumed regularly and viewed as visitor necessities such as ice, food, and personal care products. Approved prices for these specific types of retail merchandise are established by applying approved markup percentages to product cost. The use of this source ensures comparability with the private sector, while providing a less rigorous process for both the concessioner and the park.

3.6.1. Determining Price

Markup percentages are broken down into categories. The markup percentage list is distributed annually by the NPS Commercial Services Program and posted in the [policy library](#) on SharePoint, normally before the start of the calendar year. Rate reviews should use only the most current markup percentages. Concession specialists are responsible for giving concessioners the updated percentages in a timely manner so they can implement the new rates.

Concessioners may sell some merchandise that is not listed or might fit into more than one category. Concessioners that operate in more than one park sometimes use different categories for the same merchandise to determine rates. It is important to identify those discrepancies so the percentages can be applied consistently.

Use the following formula when using the markup method to determine the maximum selling price:

$$\text{Total Cost} \times (1 + \text{markup percentage}) = \text{selling price}$$

For example, if the concessioners' cost for cough medicine is \$4.50, the park refers to the Markup table, identifies that the markup percentage for health and beauty care is 71%, and uses these numbers to identify the selling price:

$$\$4.50 \times (1 + 0.71) = \$7.70$$

Rounding is acceptable and common. In this case, the concessioner may propose to sell the cough medicine for \$7.75.

Retail Price	Round to Nearest
Below \$10.00	\$0.25

\$10 to \$49.99	\$0.50
\$50 and Over	\$1.00

Note: The common store pricing strategy of lowering prices so they end in a price of perceived better value (e.g., \$.99 or \$.49 rather \$.00 or \$.50, respectively) is permitted as long as prices are lower rather than the approved amount.

For the \$7.70 example above, that rate is rounded to \$7.75 and therefore not eligible for the .49 or .99 rounding. But if the maximum approved rate is \$7.89 and the concessioner rounds to \$8.00, they can also charge \$7.99.

If the concessioner chooses to round, rounding must be applied consistently across all products, both up and down. The concessioner may not choose to only round on products where rounding is upward and yields a higher price. These rounding practices may also be applied to services other than retail.

3.6.2. Product Costs and Freight Charges

To avoid selling the same product at different prices, merchandise on hand at the time the wholesaler announces a price change may be revalued to reflect new wholesale costs, and retail prices can be adjusted accordingly. Invoices showing price increases on these items can be used for documentation.

Documented freight costs may be added to the product cost prior to applying the markup percentages. The concessioner must produce documentation for these expenses. The concessioner may accurately identify average annual freight costs or, with NPS approval, propose a fixed freight cost to be added as a percentage of the wholesale cost. This method allows a concessioner to keep the same prices on hundreds of items throughout the year as restocking shipments come in with slightly different freight costs.

The major burden is on the concessioner, who must keep accurate records for calculation of an average freight cost. The freight cost should be stated as a percentage of merchandise sold for the previous year. The concessioner must document exactly what the percentage for freight was for the past year. If the park agrees to permit averaging and the concessioner's documentation is adequate, the percentage can be added to all merchandise sold in the following year. This procedure is a variation on the standard process that requires the concessioner to calculate the freight rate for each individual item based on the identified costs on the separate invoices.

The concessioner is required to track the actual freight costs for the year to determine if recovery of costs is above or below the actual cost. The concessioner takes this difference into account the next year by either raising or lowering the percentage to account for the difference. For example, if the concessioner estimated 2% in freight costs for the year, but the actual cost was only 1.5%, the concessioner must deduct 0.5% from the next year's estimated freight costs. This is an annual adjustment.

If the park decides to allow this time-saving process, they must ignore the invoice freight charges in calculating approved retail sales prices. The final rate for all merchandise will have the same percentage of freight charges (for example, 1.5%). Some of the actual freight rates will be higher and some lower than the overall average. For example, if the wholesale cost of an item to the

concessioner is \$10.00, 1.5%, or \$0.15 may be added before the item is marked up to the final retail price. If the mark up is 100%, the final retail price of the example item would be \$20.30. This does not include rounding, utility add on charges, or other appropriate costs. This process, when supported by accurate records, results in more stable pricing and a simpler administrative process.

Warehouse charges may not be added to the product cost. These charges include normal labor and other expenses incurred by the concessioner in handling merchandise in storage and sales outlets. Freight charges may also not be added to product costs for delivering merchandise from the concessioner's warehouse to the point of sale.

Concessioners may take advantage of volume discounts offered by suppliers. In this case, the markup should be placed on top of the wholesale cost, not the discounted cost, listed on the invoice. The concessioner must provide documentation of the volume discount when requested.

3.6.3. Variations from Listed Percentages

The percentages on the markup percentage list should be used as a maximum allowable percentage. However, if a local market price for a convenience item appears out of sync with the markup percentage list, the concessioner may request a markup waiver for a particular item and that comparability or CMD be used to set the item price. The concessioner must justify the decision to use the alternative method with appropriate documentation. The park superintendent must approve the use of these alternative rate methods in advance.

Parks are advised to discourage concessioners from adding a markup to stamps, fishing licenses, and other items typically sold at face value.

3.6.4. Grocery and Pre-packaged Food

Grocery items are considered convenience items and therefore concessioners should use the markup method for this product category. Most grocery item categories sold in concessioner grocery stores are covered in the NACS guidance. Concession specialists and concessioners should work together to review and document the selected categories.

Some concessioners sell pre-packaged food items (e.g., sandwiches and yogurt) in food and beverage facilities such as cafeterias and grab-and-go outlets. Such wholesale products purchased from a vendor and not packaged by the concessioner are considered convenience items. The markup method or MSRP is recommended when setting and approving rates for these products.

3.6.5. Rate Methods for the Sale of Mixed Product Categories

Markup is the current preferred rate method for convenience items while CMD is the preferred rate method for merchandise. In operations where there are mixed product sales including items in each of these retail categories, the park should use the associated preferred rate method for each product category. For example, if ice is sold at both a convenience store and a gift shop, markup must be used to calculate the rate at each location. The use of the appropriate rate method outweighs any interest in having a consistent rate method storewide.

3.6.6. Pricing Merchandise without a MSRP or CMD

Occasionally, concessioner's merchandise will not fit any of the criteria listed and merchandise prices may not be set using MSRP or CMD. In this case, concessioners may use the markup method using the "general merchandise" category.

3.6.7. Markup Method for Fuel

The preferred method for setting fuel prices is comparability. However, the park may allow concessioners to use a markup method when the comparability method is not practical. Comparability may be inappropriate for parks because comparable operations can sometimes charge lower fuel prices due to lower transportation costs, higher volume of sales, contract discounts with refiners, and other factors not available to concessioners. If comparability for fuel pricing is not appropriate at a park for any of these reasons, they may choose to approve fuel prices based on the markup method.

According to the National Association of Convenience Stores (NACS) Retail Fuels Report, despite extreme day to day volatility, retail margins for fuel are fairly consistent on an annual basis. The NACS Factbook reports an annual nationwide average markup. This markup is distributed annually by WASO with the convenience item markup percentages and posted on SharePoint in the [policy library](#). This percentage margin includes the retailer's profit and costs to sell fuel, including credit card fees, utilities, rent and equipment. It should be noted, this is the same source the NPS uses annually to establish the markup for convenience items. This markup only applies to automobile fuel stations, as boat fuel station may have additional operating costs.

Determining Price

The following example outlines how to apply the fuel markup percentage. The fuel invoice the concessioner receives should show the base price of the fuel (per gallon), as well as any federal, state, and local taxes (per gallon). Below is an example of an invoice:

Markup calculation for this invoice using a **sample 7% markup**. **For the current fuel markup percentage, check the [policy library](#) on SharePoint.**

1. The base rate per gallon including taxes for this invoice is calculated as \$2.50503/gallon ($1.96220 + .18400 + .00190 + .16600 + .02193 + .16900$).
2. Any transportation fees are calculated as a "per gallon" rate. For example, assume the concessioner was charged a transportation fee of \$100 for this shipment of fuel. The cost of the transportation fee per gallon is $\$100/1471$ gallons = 6.8 cents per gallon (.068).
3. The transportation charge per gallon is added to the base rate. In this example, the total including transportation is \$2.57303 ($2.50503 + .068$) per gallon.
4. After adding the taxes and any applicable transportation fee, the 7 percent markup is applied to determine the final approved rate. This is calculated the same way as the markup for convenience items:

Total Cost x (1 + markup percentage) = selling price

$$\mathbf{\$2.57303 \times (1.07) = \$2.7531421}$$

5. The rate is then rounded. The total of \$2.7531421 for this example can be rounded to \$2.75 or \$2.749 per gallon.

The price for fuel will fluctuate whenever a concessioner receives a new delivery of fuel. When performing a rate check, the concession specialist uses the most recent invoice to calculate the allowed rate. As with other rate methods, this is the maximum approved rate the concessioner can charge. To be competitive, the concessioner may always charge less than the approved rate.

Local Fuel Markup Alternative

Concession specialists may also develop their own local markup percentage using the comparable operations' rates. An Excel spreadsheet is available in the [Contract Management Toolbox](#) on SharePoint to help calculate the local fuel markup percentage.

3.7. Core Methods

The core methods allow parks to simplify the rate administration process by using different rate methods for products or services that have core and non-core offerings. The park decides which products or services are "core" to the operation and prices those using the more complex comparability process, while the non-core products or services are set by the concessioner based on what the market will bear. Methods for food and beverage (core menu), lodging (core room), retail (core retail), and other services (core services) are detailed below.

3.7.1. Core Menu

Rather than setting all menu item rates using the comparability method, the concept of establishing a core menu is the preferred rate method for food and beverage services. Parks may use the comparability process if the core menu process does not produce appropriate rates.

Core Menu Development

The concession specialist and concessioner should work together to select core menu items. The core menu helps identify specific food categories and items that are standard on comparable menus and should appear on the concessioner's menu.

The core menu should reflect national trends, be representative of the expectations of park visitors, and include a number of popular food and beverage selections. These selections cover food categories such as:

- Entrees (beef, fish, chicken, vegetarian, etc.)
- Beverages

- Desserts
- Appetizers

While the number of core menu items varies for each establishment, it is recommended that the core menu make up approximately 1/3 of the menu. For example, a full service restaurant may offer a full menu with 12 entrée items and have a core menu consisting of four entrees, one appetizer, one beverage and one dessert.

The core menu application is not appropriate for activities that include food as part of a package deal such as river running, mountain climbing, and backcountry operations since their menus are limited.

The three steps for developing a core menu are:

1. The concession specialist reviews the menus of the selected comparables and identifies the **food categories** generally found on each menu. Examples may include appetizers, entrees, desserts, beverages, and children's menus.
2. The concession specialist identifies the **food types** made available by most of the comparables. Examples may include fish, fowl, pork, beef, pastas, diet, etc.
3. After establishing the food types that should be on the core menu, the concession specialist identifies actual **food items** that will appear on the core menu. These items are routinely found on the majority of the comparable menus. Other than items typically described at a certain portion size on the menu (meats and some beverages), the approval of core items is not tied to specific portions or preparations styles.

The concessioner must provide adequate portion sizes, but should have some leeway with creativity in presentations and combinations. The core menu should include items that fall under the Healthy Food Standards (released in 2012). For more information, see the [Program Policy Library](#) on the Commercial Service SharePoint page.

Parks should pay attention to selections of national interest or expectation, and items necessary to satisfy normal health considerations.

Non-Core Menu Items

After the park establishes the core menu, the concessioner may add items to the non-core menu without the need for a detailed park analysis. Non-core menu items should include local and regional specialty food items. The concessioner is responsible for setting non-core rates consistent with the local market. If the park questions rates of non-core menu items, the concessioner must justify the rates.

The concessioner is not required to submit the non-core menu for review. With an appropriate core menu, there is no need for the park to be concerned with minor or subtle pricing variations in the remainder of the menu.

Core Menu Rates

With the establishment of the core menu, the administration of rates should be relatively simple using the selected comparables. The park may average the core menu item rates on the comparable menus and use that average as the approved rate. However, if averaging does not produce a suitable rate for the product, it is acceptable to price the concessioner's rate at the appropriate price point within the range of comparables' rates. For instance, with all other quality measures being equal, if the concessioner offers a salad with all entrees while the comparables do not, it is appropriate to review the range of prices the comparables offer and approve a rate at the higher end of the scale. It is unacceptable to establish a range of rates for core items and then approve only the high-end rates for menu items without any further justification.

3.7.2. Core Room

The core room rate method allows parks to categorize and use different rate methods for two groups of lodging rooms – core and non-core. This core room rate method addresses difficulties in finding comparables for the unique room types, while ensuring the Service is effectively meeting its obligation to approve reasonable rates in a prompt and accommodating manner.

Core Rooms

Core rooms must be comprised of the majority room type(s) of the lodging operation, typically standard hotel, motel, or lodge rooms. Core room rates are set using the comparability method as previously described. There may be a variety of rates set for core rooms based on the amenities provided and comparables used for each room type. For example, there may core rooms with and without bathrooms.

Non-core Rooms

Non-core rooms should be unique room types, such as cabins or suites, which may be difficult to find comparables for, and should comprise no more than 1/3 of the total rooms available. The concessioner sets the rates for the non-core rooms based on market conditions, and must be able to provide justification for non-core rates if requested.

The concessioner and the park must monitor occupancy data and visitor comments to gauge the visitors' satisfaction of the value of both core and non-core rooms.

Core and Non-core Lodging Properties

In some parks, there are multiple lodging properties offered by a single concessioner (e.g., upscale, mid-scale, basic and/or rustic). In such circumstances, it may be possible to apply the core method to the portfolio of properties rather than particular room-types. The park may use comparability to approve rates for the core property(ies), while allowing the concessioner to base rates for the non-core property(ies) on market conditions. Non-core properties are:

- More unique and eclectic.
- Serve a small portion of parkvisitors.
- Harder to find comparables for.

As with any application of the core method, it is important to evaluate performance and visitor comments to ensure visitor needs are being met relative to offerings and value.

3.7.3. Core Retail

The core retail process is not much different from the markup method, except the markup is not applied to all convenience items. Markup is only applied to a core list of items. These items are considered necessities and must remain affordable to visitors. Using the markup method for core necessities allows a nationally standardized percentage to be applied to basic need items. All other convenience items are priced using CMD, thus relieving the burden of pricing all convenience items with markup.

Core Retail Products

The following is a list of core retail items that should be priced using the appropriate markup category. All other convenience items may be priced using CMD. This list is a suggested list of core items, and the park may add or delete items as necessary for their retail operation. Parks do not need to use the North American Industry Classification System (NAICS) numbering included below.

07-00-00 Packaged Beverages

07-04-00 Juice/Juice Drinks (Includes: 100% juice, vegetable drinks, canned/juice box drinks) 07-05-00 Bottled Water (Includes: flavored, carbonated, still, fortified waters)

17-00-00 Alternative Snacks

17-02-00 Granola/Fruit Snacks
17-03-00 Health/Energy Bars (Includes: meal replacement, diet, energy, cereal, nutritional bars)

20-00-00 Non-edible Grocery

20-01-00 Laundry Care (Includes: laundry detergent)
20-02-00 Dish Care (Includes: dish soap)
20-03-00 Household Care (Includes: insecticides)
20-04-00 Paper/Plastic/Foil Products (Includes: toilet paper)

21-00-00 Health & Beauty Care

21-01-00 Analgesics
21-02-00 Cough & Cold Remedies (Includes: cough drops)
21-03-00 Stomach Remedies (Includes: antacids)
21-06-00 Grooming Aids (Includes: shampoo, oral care, deodorants, soap, shaving needs)
21-07-00 Feminine Hygiene (Includes: tampons, sanitary napkins)
21-10-00 Skin Care/Lotions/External Care (Includes: sunscreen, eye care, lip care, first aid)

22-00-00 General Merchandise

22-02-00 Batteries

22-08-00 Lighters

28-00-00 Ice

3.7.4. Core Services

The core services rate method is identical to the core room rate method, except it is used for other service types when there is a variation in the types of offerings such as tours, transportation, and guides and outfitters.

Core Services

Core services should be comprised of the most popular services the concession operation offers and should make up at least two-thirds of the concession operation's visitation. For example, if a concessioner offers a variety of bus tours and 75% of the visitors choose to go on the two hour tour, the two hour tour is the core service. There may be more than one service type in the core services. For example, if a mountaineering guide offers three routes, but one route is only selected by 10% of the visitors, then the other two routes are the core services for that operation.

Core service rates are set using the comparability method as previously described. There may be a variety of rates set for core services based on the amenities provided and comparables used for each service type.

Non-core Services

Non-core services should be unique service types and should not comprise of more than one-third of the total services available. Rates for the non-core services will be set by the concessioner based on market conditions. The concessioner must be able to provide justification for non-core rates if requested

The concessioner and the park must monitor visitor comments to gauge the visitors' satisfaction of the value of core and non-core services, and to monitor the effectiveness of the core service method.

3.8. Financial Analysis Method

This method provides a process for calculating rates at the beginning of a contract using a financial analysis and annually adjusting the rates using an index. This method may be useful for unusual services such as seaplane rides, mountaineering services, bathhouses, ferry services or river running operations. It is intended for use when:

- Comparables are not available.

- No other rate method can be used.
- There is a need to account for unique aspects of the business that other rate methods cannot address.

The steps involved with this method are:

Establish the Initial Specified Rate - The NPS representative or consultant may use a number of methods to develop the base rate, such as:

- Calculating a build-up of operating costs.
- Using industry statistics or publications.
- Performing an economic feasibility study.
- Using another method deemed appropriate by the regional office or WASO.

The established base rate must be fair to visitors and provide a reasonable opportunity for a profit for the concessioner. The superintendent may request assistance from the regional office or the WASO Commercial Services Program.

Incorporate the Rate into the Contract - Once the base rate is determined, the park must incorporate it into the operating plan during prospectus development. In addition, the park must identify what type of index is appropriate to use to update rates annually. The Consumer Price Index is commonly used, but other industry publications or indices may be used where appropriate.

Adjust the Rate Annually -The rate is adjusted annually using the chosen index and updated in the operating plan. Indexing should not exceed four years before reestablishing the base rate (by updating the financial analysis) on the fifth year.

3.9. Indexing Method

Indexing is a procedure for adjusting concessioner rates that were set using either comparability or a financial analysis. It is not a stand-alone method to determine rates. Indexing can reduce the administrative burden on both concessioners and NPS personnel by eliminating the need for a comparability study to permit an adjustment.

A price index is a ratio of related prices for commodities or groups of commodities to prices in a base year. The percentage change in prices (inflation rates) is calculated by dividing the change in the index over a period of time, by the index at the beginning of the same period.

The most commonly applied index, CPI, is compiled by the Bureau of Labor Statistics of the Department of Labor. CPI breaks down data for specific products and services into a “U.S. city average” index, as well as indices for specific cities and regions. Generally, the recommended CPI to use is the Consumer Price Index for all Urban Consumers (CPI-U) for “all items”, U.S. city average. This index tends to be more stable over time, with fewer fluctuations up and down than tend occur with the more specific region or city CPIs. Other CPIs may be more appropriate in certain circumstances. In addition, indices other than CPI may be used if agreed upon by the park and concessioner. Parks should consult their regional office to determine the appropriate index if they are unsure. The index to be used should be documented in the operating plan.

Examples of CPIs for specific products and services offered by NPS concessioners are identified in the following chart:

NPS Concessioner	Corresponding CPI Index
Restaurants (food service)	Food away from home
Restaurants (alcoholic beverages)	Alcoholic beverages away from home
Lodging	Lodging away from home
Retail sales	Retail sales
Bus transportation	Intercity bus fare

Concessioner rates can be approved using the indexing method for four years. They should not be indexed for a fifth consecutive year, and another method must be used, such as comparability.

Example of Indexing

The following section shows a sample of the CPI data available and the Index Pricing Worksheet used in this exercise.

In February 2016, the concessioner at Mammoth Cave National Park requests a price increase for hamburgers in his restaurant. The most recent approved price for a hamburger is \$10.00, which was approved in February 2015 through comparability and he would like to raise the price to \$12.00, which would be a 20% increase.

The operating plan specifies using the CPI-U price index for the “U.S. city average” of “all items” (see example below). The CPI table indicates that from February 2015 to February 2016, those food prices have increased by 1%. On this basis, the concessioner would be limited to a 1% increase, for a total price increase to \$10.10.

Sample CPI Index

	Item Price (A)	Date (B)	CPI (C)
(1) Proposed Rate	\$12.00	02/2016	237.111
(2) Previous Approved Rate	\$10.00	02/2015	234.722
(3) Line = (1) minus line (2)	\$2.00		2.389
(4) Line = (3) divided by line (2)	20%		1%

If line (4) column (A) is greater than line (4) column (C), see below. Otherwise enter the requested price on line (9) below.

- (5) Enter amount on line (2) column (A)
- (6) Enter amount on line (4) column (C)
- (7) Multiply line (5) by line (6)
- (8) Add line (5) and line (7)
- (9) **Approved Indexed Price**

1%
0.10
\$10.10

\$10.10

4. Utility Costs

In accordance with DO35B, the NPS must recover costs for providing utilities to non-NPS users, including concessioners. If approved by the park, the concessioner may choose to charge an add-on to its rates to account for a higher utility rate than what the comparables are paying. Parks may calculate add-ons using one of two ways, depending on whether the contract was issued before or after the Commercial Services Impacts and Changes in Utility Charging Policies and Procedures Related to Director’s Order 35B memo issued on January 31, 2013.

4.1. Calculating Utility Add-ons for Contracts Issued Prior to January 31, 2013

If a contract was issued prior to the [Utility Charging Policies and Procedures Related to DO35B](#) memo dated January 31, 2013, a utility-add (sometimes referred to as a pass-through) is allowed if the concessioner’s utility costs are higher than comparable utility costs outside the park. The add-on is only allowed on NPS-produced utilities, not those provided by a third party utility provider.

The steps to determine the annual add-on amount are:

1. Compare the NPS-provided utility rates with the utility rates of areas outside the park, preferably where rate comparables are located. If the NPS rates are equal or lower than the comparable utility rates, no add-on is allowed.
2. If the concessioner’s utility rates are higher, multiply the difference between the two rates by the approximate annual usage. This will give the estimated amount of utility add-ons allowed for the year.

Example: If the concessioner uses 800,000 gallons of water per year and the NPS charges the concessioner \$20.00 per 1,000 gallons of water, but the gateway community charges only \$10.00 per 1,000 gallons, then the annual add-on amount allowed for that year is \$8,000.

4.2. Calculating Utility Add-ons for Contracts Issued After January 31, 2013

Contracts issued after January 31, 2013 have utility add-ons approved during prospectus development and stated in the operating plan and business opportunity. The utility add-on is typically defined as a percentage of gross receipts and represents the estimated amount the concessioner will pay in utility costs compared to similar operations in the private sector.

Example: During prospectus development it was determined the concessioner is allowed a utility add-on equal to 2% of gross receipts to account for its higher utility costs. If the concessioner’s estimated gross receipts are \$500,000 for next year, the concessioner is allowed to collect \$10,000 in utility add-ons for next year.

4.3. Utility Add-on Management for All Contracts

Add-on Distribution

The concessioner must submit an annual add-on distribution plan to the park for approval. Utility add-ons must be distributed across those services that are predominant users of the utility (typically lodging and food and beverage). When making this calculation, the concessioner should employ a reasonable method such as using the ratio of departmental revenue relative to gross receipts.

Annually, the Service will review and approve the distribution as appropriate. Add-ons can be applied as either a flat dollar amount (e.g. \$2 per room night) or a percentage (e.g. 3% of F&B receipts). The distribution plan should show:

- Estimated units to be sold or dollar volume.
- Amount of add-on shown as a dollar amount or as a percentage.
- Estimated additional revenue.
- An explanation if a decrease in units or volume sold is expected.

The following table is an example of a concessioner’s add-on distribution request. The format is recommended but not required. It provides all of the necessary information needed for NPS review and documents the justification for the final decision. It is the park’s responsibility to outline to the concessioners exactly how to request the rate adjustment.

Product/Service	Estimated Units to be Sold Annually	Add-on Amount	Estimated Add-on Revenue
Lodging Rooms	5000	\$1.00	\$5,000
Boat tours (units)	2000	\$1.00	\$2,000
Food and Beverage	\$100,000	1%	\$1,000
Estimated Add-on Revenue			\$8,000

Goods and services adjusted should affect a wide range of visitors. The superintendent should discuss any concerns about the proposed adjusted rates with the concessioner. If the rate adjustment exceeds 15% of the base price, the superintendent should request the concessioner spread the adjustment over more items or classes of merchandise. Differences that cannot be resolved are treated as an appeal and referred to the regional director following the standard rate appeal procedures.

Rates and Receipts

The concessioner must incorporate the add-on amount into the advertised rate or price, and may not show utility add-on amounts as a separate line item on billings (receipts). The utility add-on is not added to items that are priced using MSRP or CMD. The concessioner may have a small notice near cash registers or on its website about the addition of a utility add-on to rates. Such notices must not mischaracterize the allowable add-on as a tax or required-NPS charge.

Reconciliation

The park must reconcile utility add-ons at least once each year to ensure the concessioner has collected the appropriate amount for that year. During the last year of the contract, it is recommended that the concessioner reconciles utilities more frequently to avoid having a large surplus or balance due at the end of the contract.

WASO developed a spreadsheet to assist in tracking utility add-ons through the term of a contract. The spreadsheet is available on the [SharePoint Contract Management Toolbox](#).

To reconcile and calculate add-ons for the next year, the concessioner must submit their year-end data for actual revenue, add-ons collected, and utility costs as soon as possible after the year's end. A due date for this information should be added to the operating plan.

5. Miscellaneous

5.1. Reduced Rates to Government Employees

The Concessioner must include reduced rates for lodging for federal government employees on official business as part of its approved rate requests. Federal employees on official business and others on park-related business, as designated by the superintendent, may also receive reduced rates (i.e., complimentary or reduced price tickets) for transportation. Reduced rates for transportation may only be given if extra seats are available and may not take the place of a paying customer. Other goods and services may not be provided to government employees or their families without charge or at reduced rates unless they are equally available to the public.

5.2. Reservations and Deposits

Concessioners should develop reservation procedures, including standards for deposits and cancellations, which are patterned after those businesses used as comparables. The concessioner's approved rate schedule and advertising material must state in detail the conditions under which deposits will be refunded or cancellation fees charged. Reservations may not be accepted more than two years in advance for accommodation facilities or other services such as trail rides, river runners, or houseboats.

5.3. Minimum Length of Stay Restrictions

A minimum length of stay restriction requires that a customer make a lodging reservation for a minimum specified number of consecutive nights. For example, a hotel may require a minimum stay of two consecutive nights over a holiday weekend. This strategy allows the hotel to develop a

relatively even occupancy pattern and it is common for resorts to use this approach during peak occupancy periods or during special events. Concessioners may implement this strategy if they can document similar strategies at its comparables and ensure that such minimum stays are reasonable given the concession visitation patterns.

5.4. Third-party Sales, Travel Agencies, and Intermediaries

Third-party companies (travel agencies, online booking engines, etc.) that are selling rooms or services for the Concessioner must sell those rooms or services at or below the NPS-approved maximum rate. The Concessioner must include any service fee or commission that the third party charges in the approved maximum rate.

6. Glossary

Actual Comparables: Those businesses selected from the list of potential comparables determined to be the most similar to the concessioner's operation.

Competitive Market Declaration (CMD): Method of rate administration for those concessioners operating in a competitive market and deriving no competitive advantage from being located in a park, or when prices for items or services are routinely negotiated between the buyer and seller (such as boats and antiques).

Consumer Price Index (CPI): An index of prices used to measure the change in the cost of basic goods and services in comparison with a fixed base period.

Convenience items: Products that are generally consumed regularly and viewed as necessities. Examples include ice, food, and personal care products.

Core Method: Method of rate administration that sets rates for core services or items based on comparability, while non-core services or items are priced by the concessioner based on what the market will bear.

Direct Comparability: Method of rate administration that compares concession operations and rates to the external market using specific criteria.

Extra Quality Features (EQFs): Additional attributes that add value. The purpose of including EQF information is to more accurately determine the value provided by the concessioner relative to the comparables.

Financial Analysis Method: Method of rate administration used when comparables are not available for unusual services, such as seaplane rides, mountaineering, bathhouses and interpretive services. Rates are established during the contracting process.

Full Review: Direct Comparability process which requires an onsite visit to collect data. This is typically used for more complex operations such as hotels and full service restaurants.

Indexing: Method of rate administration which uses the consumer price index (CPI) or other indices to adjust prices.

Limited Review: Direct Comparability process which permits the collection of data by telephone, internet or other correspondence. This is used for smaller, less complex operations.

Markup Percentages: The profit percentage that is added to the product cost to establish the selling price. The following formula is used to calculate markup percentages:

$$\text{Total Cost} \times (1 + \text{markup percentage}) = \text{selling price}$$

Potential Comparables: Businesses suggested by either the concessioner or park personnel as a candidate for being comparable to the concession operation.



7. The Basics Regarding Environmental Audits

The NPS requires that all concessioners undergo a baseline environmental audit by the NPS Commercial Services Program at the beginning of their operations and at least once every 5 years during the contract's term. In addition to evaluating the concessioner's compliance with environmental laws, the audits are also intended to educate concessioners and NPS staff about environmental management.

Audits can be conducted in person, with NPS staff visiting and inspecting the site, or by telephone. This decision is based on the size and complexity of operations as well as their accessibility. Prior to a site visit, NPS's Commercial Services group will send a concessioner various questions to help the group understand the specific issues which may be involved in the audit. These questions request information on concession facilities, services, and operations, as well as environmental program information. During the site visit, the audit team works with both the local Park staff and the concessioner to inspect the concession facilities and operations. In the course of the audit, NPS determines whether a concessioner has met the requirements set out in federal and state laws and regulations, applicable Executive Orders, local environmental codes and ordinances, NPS policy and the concession contract requirements. The audit team also may interview the concessioner's staff in an effort to gather information on concession facilities, services, and operations. Questions may pertain to employee's understanding of their responsibilities, how environmental programs are being carried out, implementation of other concessioner policies and procedures, and the effectiveness of any training concession staff has been given. The audit team will also determine whether any required documentation is being properly maintained, such as inspection logs.

For these reasons, it is valuable for a concessioner to meet with its staff before any environmental audit and thoroughly assess its compliance with its Environmental Management Plan. It also can be valuable to take photographs of any structures or conditions noted by the audit team during their inspection so that the particular condition is documented. The NPS audit team is instructed to point out to the concessioner any preliminary audit findings, recommended corrective actions, and exceptional practices as they are identified during the inspection.

The audit team will then prepare a preliminary environmental audit report (PEAR) and provide a copy of the preliminary report to the concessioner for its comments. A teleconference is then scheduled, during which the concessioner can further comment on the preliminary findings. If the concessioner corrects any non-serious deficiencies at this time, the audit team may remove them from the audit findings. A Final Environmental Audit Report (FEAR) is then prepared. If any findings of non-compliance are set out in the FEAR, the concessioner is then given a certain amount of time to correct those issues and works with the local Park staff on resolving them.

NPS has developed a National Park Service Commercial Services Program Environmental Audit Operating Guide, which is set out on the following pages. The Guide documents the specific responsibilities and procedures for conducting environmental audits of NPS concession facilities and services.

**National Park Service Commercial Services Program
Environmental Audit Operating Guide**

FOREWORD

This is the first edition (Version 1.0 (DRAFT 4.0)) of the *National Park Service Commercial Services Program Environmental Audit Operating Guide* (Guide), effective September 30, 2013. The Guide will be used to conduct environmental audits of National Park Service (NPS) concessions from the effective date until it is revised.

The primary audience for the Guide is audit team members who conduct environmental audits for the NPS Commercial Services (Commercial Services). The Guide describes policies and protocols for conducting environmental audits, and is intended to be used as a reference for how the Commercial Services environmental audit program should operate. The Guide is not intended to describe all environmental requirements applicable to NPS concession contracts.

NPS personnel who are engaged in the administration of concession contracts must be knowledgeable about and apply the provisions of Title 36 of the Code of Federal Regulations (36 CFR) Part 51, NPS *Management Policies*, as well as the contract and its Operating Plan and Maintenance Plan exhibits. In the event of any inconsistency between the Guide and the National Parks Omnibus Management Act of 1998, 36 CFR Part 51, or the contract, the latter document or documents prevail.

This document is for internal guidance only, and does not impose mandatory requirements for the NPS, its contractors or concessioners. This document does not create any rights, substantive or procedural, that are enforceable by law by any party.

The heart of this Guide is the Auditor's Handbook. To keep the Auditor's Handbook concise, some topics are supplemented with appendices that provide greater detail.

The Auditor's Handbook addresses issues of particular relevance to auditors, such as the audit planning process and steps that should be taken during the pre-visit, site visit, and post-visit phases of each audit. The appendices include explanations of the audit criteria in more detail, documents that support and explain the relationship between the Commercial Services environmental audit program and the NPS Environmental Audit Program (for audits of national parks), and tools and guidance to assist auditors in completing an environmental audit.

The Guide will be reviewed periodically and updated as necessary to address policy and program changes. The Environmental Audit Coordinator (Coordinator) and staff welcome comments, clarifications, and/or suggested improvements. Please direct them to:

National Park Service, Commercial Services Program
Attn: Environmental Audit Coordinator
PO Box 25287, Denver, CO 80225
CSEnvAuditCoordinator@nps.gov

I. INTRODUCTION

NPS Commercial Services Program Environmental Audit Program Background and Purpose

In 1916, the Organic Act established the National Park Service (NPS) to “promote and regulate the use of the...national parks...[their] purpose [being] to conserve the scenery and the natural and historic objects and the wildlife therein to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” This legislative mandate challenged the NPS to be an accountable, active, and responsible steward, while also providing visitor services and carrying out associated operations in national parks that can potentially impact resources both inside and outside park boundaries.

Given federal and state environmental protection laws and regulations designed to ensure that adverse resource impacts are minimized, the Department of the Interior (DOI) recognized a need for improved systems to measure compliance of facilities, including federal agencies and others (e.g., concessioners and contractors). The DOI established an internal environmental audit program in 1997 (DOI Audit Policy) that mandates that DOI bureaus, including the NPS, develop and implement an environmental auditing program for “all lands, facilities, and operations.” The NPS has interpreted this directive to include NPS concessioners.

Commercial Services established a concession environmental audit program in 1999, and has been conducting environmental audits ever since. Commercial Services adopted the NPS Environmental Audit Program (EAP) Operating Guide, which was developed by the NPS for auditing park operations and facilities, in support of the DOI Audit Policy.

Commercial Services recognizes the need to develop and implement an additional audit program to account for various programmatic and procedural issues related to concessions that differ from park operations. These differences include the following:

- NPS EAP audits of parks are conducted under regionally managed programs, whereas Commercial Services environmental audits of concessioners are centrally administered. While each region uses the NPS EAP Operating Guide as a minimum standard, it has been implemented differently in each region. Potentially, a business holding concession contracts in different regions would be subject to different protocols and criteria if it were audited by regionally managed programs. Having a single national program to audit concessioners allows for a comprehensive and consistent national environmental performance baseline for all concessioners.
- Concession activities are authorized by a legally binding contract that stipulates the legal responsibilities and requirements for a concessioner. Environmental audits review concession contract requirements and ensure that audit recommendations are consistent with and reinforce those requirements.

- Environmental audits provide useful information to the NPS for developing new concession contracts and managing current concession contracts. Accordingly, environmental audits are scheduled in consideration of concession contract effective and renewal dates.
- Most concession contracts are awarded to small businesses that may not have the technological or financial resources afforded by some larger concessioner companies. As a result, environmental audits of concession operations emphasize compliance assistance and best management practice (BMP) recommendations to concessioners and park concession staff. Developing useful and consistent compliance assistance tools is more easily and efficiently accomplished through a distinct national-level program.

To verify that the approach and criteria used for auditing concessioners does not conflict with other environmental programs, a third party compared the environmental audits to the Board of Environmental, Health, and Safety Auditor Certifications (BEAC) *Standards for Auditing* and the American Society for Testing and Materials (ASTM) *Environmental Auditing Guidelines*, both of which are nationally recognized audit standards. The conclusion was that the environmental audits generally conform to the BEAC and ASTM standards with no significant disparities or contradictions.

Disclaimer

Notwithstanding anything to the contrary in this Guide and its appendices, this material is not intended to describe all environmental requirements that may be applicable to NPS concession contracts, nor is it intended to suggest that all environmental authorities cited herein may be applicable to concessions.

In addition, this document establishes internal guidance only and does not impose mandatory requirements on the NPS, its contractors or concessioners. This document does not create any rights, substantive or procedural, that are enforceable by law by any party.

Authorities

The authorities for environmental audit policy and procedures are as follows:

- **NPS, Title 36 of the Code of Federal Regulations (36 CFR) Part 51 (Concession Contracts).** Part 51 contains regulations pertaining to the preservation of the parks and administration of concession operations.
- **DOI, Policy, “Environmental Auditing,” *Departmental Manual 515, Chapter 2 (515 DM 2)*.** Mandates that the NPS develop and implement an environmental auditing program for “all lands, facilities, and operations.” The NPS has interpreted this directive to include concessioners.
- **Executive Order (EO) 13423, “Strengthening Federal Environmental, Energy, and Transportation Management.”** Specifies that the head of each agency establish an agency program for environmental compliance reviews and audits to ensure “...legally-binding

obligations between the agency and a tenant or [concessioner]...to the extent the head of the agency determines appropriate, that the tenant or concessionaire take actions relating to matters within the scope of the contract that facilitate the agency's compliance with this order" (Section 3). Note that EO 13423 supersedes EO 13148, which specified that all federal agencies, including DOI, conduct periodic environmental audits including their "contractors and concessioners as appropriate."

- **NPS, *Management Policies*, Chapter 10, "Commercial Visitor Services."** Authorizes commercial visitor services through concession contracts or Commercial Use Authorizations (CUAs). Section 10.2.4.10, "Environmental Program Requirements," provides authority for the NPS to require concessioners to meet environmental compliance objectives, and to conduct environmental compliance audits of all commercial visitor services at least every three to five years, in accordance with this Guide.
- **NPS, Director's Order (DO) 48, Chapter on "Concessions Environmental Management" (draft).** Requires that Commercial Services develop and implement an environmental audit program for concessions consistent with the NPS EAP for parks.
- **NPS, Contractual Agreements.** Concession contracts, CUAs, or historical leases impose compliance with environmental laws.

How to Use the Guide

The Guide documents programmatic responsibilities and procedures for conducting environmental audits of NPS concession facilities and services. Concessioner-owned facilities, operations, and services should not be included in park audits. However, in some cases, operational responsibilities may be shared between park and concession staff. Accordingly, to the greatest extent possible, the management and implementation of the Commercial Services environmental audit program is consistent with the *NPS EAP Operating Guide*, although certain environmental audit program management and field procedures differ from the NPS EAP.

Relying solely on information in the Guide does not guarantee compliance with applicable laws. Strategies, procedures, and proposed solutions for compliance issues should be discussed with the appropriate federal, state, and/or local regulatory agencies as well as with park staff. It remains the responsibility of concession staff to ensure that they are in compliance with all applicable laws and regulations.

Guide Organization

The Guide consists of four primary sections, plus associated appendices. The focal point of the Guide is the Auditor's Handbook, which consists of Sections II, III, and IV and is supported by information in the appendices.

The Auditor's Handbook provides environmental audit team members with guidance and general procedures for conducting environmental audits. It is divided into three main sections:

- Section II – “Environmental Audit Planning,” which defines the scope of environmental audits and audit team roles and responsibilities;
- Section III – “Conducting a Standard Environmental Audit”; and
- Section IV – “Conducting a Telephone Environmental Audit.”

Guide appendices support and augment the Auditor's Handbook and provide specific tools for auditors.

Guide Audiences

Environmental audit team members are the primary intended audience for the Guide. However, the Guide can also be useful for NPS staff and NPS concessioner representatives. Nevertheless, the Guide is not intended to describe all environmental requirements applicable to NPS concession contracts. Concessioners remain responsible for determining and complying with all applicable laws and regulations.

The Guide has been designed to provide a relatively comprehensive reference for NPS Commercial Services auditors. However, keep in mind that it is built upon the foundation of the NPS EAP. Therefore, those reading this Guide should also be familiar with the *NPS EAP Operating Guide* and understand how the Commercial Services environmental audit program for concessioners relates to the NPS EAP for parks.

Definition of Terms

The terms defined in this section are useful for understanding procedures explained in the Guide. Acronyms and abbreviations commonly used by Commercial Services are also provided.

Glossary

Many terms are identical or very similar to those given in the *NPS EAP Operating Guide*. Definitions that are specific to Commercial Services and are not defined in the *NPS EAP Operating Guide* are denoted with an asterisk (*).

Applicable Laws*: Applicable laws are defined under concession contract language found in the Federal Register (FR) (Vol. 65, No. 87, May 2000) and consist of “the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.”

Audit Criteria: The regulatory and policy standards developed or adopted by the NPS EAP and Commercial Services, against which audited entities are evaluated during an audit. They are summarized in the EnviroCheck Sheets. (See EnviroCheck Sheet definition below.)

Audit Finding: A documented conclusion of conditions at the audited entity's facilities or property at the time of the audit, based on objective and verifiable evidence gathered during the audit and based on a comparison of that evidence against the audit criteria. Audit findings may relate to individual occurrences of non-compliance, or they may relate to a single issue that impacts all concession facilities, services, or operations.

Audit Handler*: An audit team member who assists in all aspects of the pre-audit, audit, and post-audit activities as requested by the audit team leader.

Audit Logistics Plan*: A plan developed by the audit team to prepare for and manage an audit.

Audit Protocol: A list of issues or questions designed to help address objectives related to applicable audit criteria. The NPS EAP and NPS Commercial Services EAP audit protocols are contained primarily within the set of documents known as EnviroCheck Sheets. (See EnviroCheck Sheet definition below.)

Audit Program Manager*: The designated person in Commercial Services responsible for day-to-day aspects of the environmental audit program (e.g., scheduling, template development, auditor selection/approval).

Audit Report: The report generated upon completion of the audit, detailing audit findings, BMPs, and exceptional practices.

Audit Schedule: The schedule developed by the Audit Program Manager and the Coordinator for auditing concessioners during the year.

Audit Scope: A description of what is to be audited. The audit scope includes a definition of the audited entity, audit period under review, and audit criteria.

Audit Team Leader (ATL): The audit team member who has demonstrated technical knowledge of audit criteria, has been approved by the Audit Program Manager to lead an audit, and assumes overall responsibility and authority for completing an environmental audit. Section II. B describes ATL qualifications in more detail.

Audit Team: A group of individuals consisting of an ATL and at least one other auditor, responsible for conducting an audit and preparing the audit report.

Audited Entity*: The concession whose contractually assigned or defined facilities, services, activities, and operations are evaluated under an environmental audit.

Auditor: An audit team member qualified to conduct a Commercial Services environmental audit. Section II.B describes auditor qualifications in more detail.

Auditor-in-Training*: Individuals who have not completed required audit training and do not have appropriate experience qualifications. Auditors-in-training may attend any portion of the audit and work with the audit team to gather evidence, understand concession operations, and learn about the audit process, auditing techniques, and audit criteria.

Baseline Environmental Audit: The initial environmental audit conducted of an audited entity, in conformance with this Guide and including the minimum audit criteria described herein.

Best Management Practice (BMP)*: Policies and practices that apply the most current and advanced means and technologies available to undertake and maintain a superior level of environmental performance that is reasonable for use in the operations conducted under the contract. BMPs are expected to evolve over time.

Closed Audit Finding*: The status granted when a compliance issue identified in an audit report (i.e., an audit finding) no longer exists.

Concessioner*: An individual, corporation, or other legally recognized entity that holds a concession contract authorized under the National Parks Omnibus Management Act of 1998 (Title IV of Public Law 105-391) or the National Park Service Concession Policies Act of 1965 (Public Law 89-249, 79 Stat. 969), and managed by Commercial Services.

Concession Contract*: A binding written agreement between the NPS Director and a concessioner authorized under one of the statutes cited in the preceding definition, and implemented in accordance with 36 CFR Part 51. A concession contract authorizes a concessioner to provide necessary and appropriate visitor services within a park area under specified terms and conditions.

Contract Category*: The designation of a concession contract under the National Parks Omnibus Management Act of 1998 that defines the concessioner's ability to obtain a compensatory interest for constructing capital improvements on government lands. Categories include Category I, Category II, and Category III contracts.

Coordinator*: The designated person in Commercial Services responsible for overall environmental audit program management and providing guidance on the environmental audits. This individual should be an NPS employee rather than the consultant conducting the third party environmental audit.

Corrective Action: An action taken by the audited entity to address issues identified in an audit finding.

EnviroCheck Sheet: The documented audit protocol for the NPS EAP and Commercial Services. EnviroCheck Sheets include a list of issues or questions designed to address the audit objectives based on audit criteria. Auditors should use EnviroCheck Sheets to assure that each audit criterion area is thoroughly evaluated. Each EnviroCheck Sheet provides guidance on interpreting regulatory and non-regulatory audit criteria as well as instructions for the auditor on what to evaluate, who to interview, and which records to review. Note that the EnviroCheck Sheets are not all-encompassing and are not intended to describe every environmental requirement applicable to NPS concession contracts.

Environmental Audit: A systematic, periodic, objective, and documented evaluation of an NPS concession in accordance with the Guide.

Environmental Management Program (EMP)*: A comprehensive, documented program developed and implemented by a concessioner to achieve environmental management objectives. For the purposes of Commercial Services, an EMP is intended to be equivalent to an Environmental Management System (EMS) (see Environmental Management System definition below).

Development and implementation of an EMP is required by contract and other NPS policy for all Category I and II contracts. According to *NPS Management Policies*, Chapter 10, Section 10.2.4.10, the EMP:

- Should be appropriate to the size and nature of the operation;
- Must account for all concession activities with potential environmental impact;
- Must be updated at least annually; and
- Must be approved by the Superintendent.

EMPs are evaluated by the audit team at the same time they conduct the environmental audit.

Environmental Management Systems (EMS): The systems and procedures in use by a unit of the NPS, designed to help park staff identify, manage, and consider all activities of the unit that may have an environmental impact, and select the most significant ones to address.

Environmental Purchasing*: The acquisition of environmentally preferable products. Environmentally preferable products are products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials, production, manufacturing, packaging, distribution, reuse, operations, maintenance, and/or disposal. “Environmental purchasing” is also known as “green procurement.”

Exceptional Practice*: Activities undertaken that are not often used by park concession operations and that demonstrate a concessioner’s commitment to environmental excellence.

Executive Summary: Part of the audit report that summarizes the audit and audit results.

Isolated Finding*: An audit finding that is not indicative of a programmatic issue and/or is not pervasive throughout the concessioner’s operation.

Open Issues: An issue that cannot be resolved without an auditor obtaining additional information.

Park: Any one of the hundreds of areas of land and water administered as part of the national park system. The term is used interchangeably with “unit,” “park unit,” “area,” and “park area.”

Period under Review: The time interval under which conditions at the audited entity are evaluated against the audit criteria. Start and end dates are specified to define this time interval.

Recommended Corrective Action*: Action(s) recommended by the audit team for concession staff to take to close an audit finding.

Routine Audit: An audit conducted in accordance with the Guide after the baseline audit. Routine audits take place if the concessioner has not changed and the required services under the current contract are similar to the previous contract. A routine audit may still take place if required services have changed, as long as the majority of services have not changed in type or scope. The determination of whether a concessioner has changed or if required services have changed in type or scope will be made by Commercial Services on a case-by-case basis. If the concessioner has changed, even if the services have not, a new baseline audit will be performed.

Superintendent's Compendium: A document that provides the public and park employees with the special designations, closures, public use limits, permit requirements, and other restrictions imposed under the discretionary authority of the Superintendent.

Standard Operating Procedure (SOP): A procedure used to carry out a specific activity or operation. SOPs are usually documented and filed or posted in a readily accessible location for employee review.

Acronyms and Abbreviations

The following abbreviations, acronyms, and terms used throughout the Guide are provided for convenience of the reader. Many terms are identical or very similar to those provided in the *NPS EAP Operating Guide*. Acronyms and abbreviations that are specific to Commercial Services and are not defined in the *NPS EAP Operating Guide* are denoted with an asterisk (*).

36 CFR	Title 36 of the Code of Federal Regulations
515 DM 2	Departmental Manual 515, Chapter 2
AQ*	Audit Questionnaire
ASTM*	American Society for Testing and Materials
Audit	Environmental audit
BEAC*	Board of Environmental Health and Safety Auditor Certifications
BMP	Best Management Practice
CFC	Chlorofluorocarbon
CFR	Code of Federal Regulations
CONCID*	Concessioner Identification Number
CUA	Commercial Use Authorization
DM	Departmental Manual
DO	Director's Order
DOI	Department of the Interior
DOT	Department of Transportation
EAP	Environmental Audit Program

EAR	Environmental Audit Report
EMP*	Environmental Management Program
EMS	Environmental Management System
EO	Executive Order
EPA	U.S. Environmental Protection Agency
FAR*	Federal Acquisition Regulation
FR	Federal Register
FY	Fiscal Year
Guide*	NPS Commercial Services Program Environmental Audit Operating Guide
HAZCOM	Hazard Communication
NPS	National Park Service
NRC	National Response Center
OSHA	Occupational Safety and Health Administration
PDF	Portable Document Format
POC	Point of Contact
RCA	Recommended Corrective Action
RCRA*	Resource Conservation and Recovery Act
SOP*	Standard Operating Procedure
SPCC	Spill Prevention, Control, and Countermeasures
WASO	Washington Area Support Office

II. ENVIRONMENTAL AUDIT PLANNING

This section of the Guide introduces the various components that characterize the scope of each environmental audit, such as defining audited entities, types of audits, audit criteria, audit frequency, and period under review. Additionally, this section provides an overview of the environmental audit team, including roles and responsibilities and auditor qualifications.

Understanding the Scope of an Environmental Audit

A clearly defined scope is critical to a successful audit. The environmental audit scope depends on:

- Which concessioner and which associated facilities and services will be audited;
- Which audit type (i.e., standard versus telephone audit) will be used;
- The audit criteria against which to audit the concessioner; and
- The period under review for each concessioner.

Audited Entities

Commercial Services is responsible for auditing operations authorized by a concession contract that provide visitor services in national parks. A concessioner may be authorized to provide visitor services under multiple concession contracts at one or multiple parks, with most contracts authorizing provision of services at a single park. However, each contract requires a separate audit. Typically, audits under Commercial Services are scheduled on a park-by-park basis—not on an individual concession basis—to conserve travel costs, minimize disruption to park operations, and allow for park-wide concession

environmental management issues to be more easily identified. This does not mean that in every case, every concession contract in a park is audited in a single visit. The Coordinator, who is responsible for overall management and guidance of Commercial Services environmental audits, works in collaboration with parks and regions to determine an annual environmental audit schedule that factors in park planning, contract expiration and award dates, and funding.

The scope of facilities, services, and operations associated with each concession to be audited consists of the following:

- Concessioner-operated facilities within park boundaries;
- Concession services and operations taking place within park boundaries;
- Concessioner-owned and concessioner-operated facilities outside park boundaries that are specifically mentioned in the concession contract; and
- Concession services and operations taking place outside park boundaries that are specifically mentioned in the concession contract; for example, if a concession contract requires composting and the concessioner composts outside park boundaries.

In some cases, operational responsibilities may be shared between park and concession staff (e.g., the park owns a fuel storage tank and NPS staff are responsible for corrosion and spill/overfill protection, but concession staff are responsible for conducting daily fuel and inventory control). In these cases, the audit team should audit only those operations that are the concessioner's responsibility and document how operational responsibility was determined.

If park or concession staff responsibility for a facility, service, or operation cannot be definitively determined, the audit team should include the facility, service, or operation within the audit scope. Otherwise it is possible that neither an NPS EAP nor an NPS Commercial Services environmental audit would address the environmental issues connected to that facility, service, or operation.

Audit Types

Audits conducted by NPS Commercial Services can take the form of a standard environmental audit or a telephone audit. In certain cases, concessions may be conditionally exempt from an audit. These determinations are made by the Coordinator based on the size, complexity, contract category, and potential for environmental impact of each concession operation to ensure that the appropriate level of effort is applied to each environmental audit. A description of these audit types is provided in the subsections below.

Standard Audit: Standard audits are consistent with DOI policy and the NPS EAP. They include a site visit as well as pre- and post-visit phases, and are described in more detail in Section III of this Audit Operating Guide.

Non-Standard Audit: Some concessions may not warrant audit site visits due to their small size, less complex operations, and/or lesser potentials for environmental impact. In addition, access to concessions can be challenging, particularly for those that have no assigned facilities in the park (e.g., river guiding,

hunting, mountaineering guiding). Furthermore, some concessions (e.g., cruise ships) are subject to comprehensive environmental evaluations through a third-party auditor (e.g., U.S. Coast Guard) and as such, that environmental evaluation may serve in place of an NPS Commercial Services environmental audit. In these cases, the Coordinator collects sufficient information to determine that the concession contract warrants a site visit exemption. The site visit exemption should be re-confirmed on a 10-year interval, which coincides with the usual frequency of a contract renewal or issuance. The Site Visit Exemption form can be found in Appendix 2.

Those concessions that meet site visit exemption criteria are eligible for undergoing a non-standard audit. Although the non-standard audit typically has a reduced level of effort for both the audit team and concessioner, the process involves the same basic elements as a standard audit, except that data collection is accomplished remotely through telephone interviews and sharing of electronic documentation. Information shared through mail, fax, and email, and potentially second-hand observations via photographs, take the place of an in-person inspection.

Telephone Audit: The most common non-standard audit is a telephone audit. Telephone audits are described in more detail in Section IV of the Guide. Another example of a non-standard audit is a cruise line audit.

Cruise Line Audit: Due to the transient nature of cruise line concession operations in parks and the complexity of such vessel operations, they present a unique challenge. As a result, an alternate audit process is implemented whereby a questionnaire is used to gather information on general and specific contract requirements from each cruise line company operating in the waters within national parks. Commercial Services auditors review the audit questionnaire, and develop an audit report summarizing the findings of the questionnaire review.

Conditionally Exempt: Some concessions may not warrant an audit due to negligible potential for environmental impact (e.g., a small business supplying only firewood). In these cases, the Coordinator collects sufficient information to justify and document these concessions as conditionally exempt. The conditionally exempt justification should be verified at least every ten years.

Audit Criteria

Environmental audit criteria are summarized in the NPS EAP EnviroCheck Sheets provided in Appendix 3 and concession-specific NPS Commercial Services EnviroCheck Sheets provided in Appendix 4. Auditors use applicable EnviroCheck Sheets as the minimum audit criteria against which to compare the activities and operations of concessions, and may formulate additional audit findings based on applicable regulations/requirements as needed. Environmental audit criteria include:

- **Federal laws**, including, but not limited to, those specified in 515 DM 2;
- **Applicable EOs** regarding environmental issues (e.g., EO 13423, Strengthening Federal Environmental, Energy, and Transportation Management) and the EOs specified in 515 DM 2. These are applicable if compliance with an EO is required in the concession contract or if the EO

states it is applicable to concessions. In other cases, findings related to requirements established by EOs would have a finding level of a BMP;

- **Federal regulations** administered by U.S. agencies such as the Environmental Protection Agency, Occupational Safety and Health Administration, and Department of Transportation, in accordance with their authority;
- **Applicable state and tribal environmental laws and regulations.** More stringent state environmental requirements supersede federal environmental requirements;
- **Applicable regional and local environmental codes and ordinances.** More stringent regional and local requirements supersede federal and state environmental requirements. For instance, regional boards and authorities may establish more stringent air quality and/or water quality standards, or the local Fire Marshall may have specific codes for the siting, construction, and operation of aboveground fuel storage tanks;
- **Applicable DOI, NPS, and park policies and procedures,** which include the DM, *NPS Management Policies*, DOs, and Superintendent’s Compendium; and
- **Concession contract requirements,** which may include an EMP (per 65 FR 26052-26086), and other contract requirements regarding environmental issues. Note: these requirements are primarily located in the operating and maintenance plans included as exhibits to contracts. State, regional, and local criteria that relate to federal audit criteria depend on the location of the concession contract being audited. Compiling these audit criteria is the responsibility of the audit team. The determination of these audit criteria by the audit team does not preclude the entity being audited from understanding and complying with all applicable laws and regulations.

NPS EnviroCheck Sheets include the topic areas identified in Exhibit 1. Not all topic areas will apply to each concession audit. The ATL will need to identify applicable topic areas prior to conducting the audit, and ensure that all team members are familiar with the criteria being evaluated. Note: Hazard Communication (HAZCOM) and Respiratory Protection Program EnviroCheck Sheets have been removed from Commercial Services audit scope since they are now strictly safety-related topic areas.

EXHIBIT 1: NPS [EAP ENVIROCHECK SHEET](#) TOPICS

- | | |
|---|---|
| <ul style="list-style-type: none"> • Air Quality • Chlorofluorocarbon (CFC) and Halon Management • Emergency Planning and Reporting • Environmental Purchasing (formerly Green Procurement) • Fuel Storage Management • Hazardous Materials Management • Hazardous Waste | <ul style="list-style-type: none"> • Laboratory Chemical and Waste Management • Pesticide Management • Solid Waste Management • Spill Prevention, Control, and Countermeasure (SPCC) Planning • Storm Water Management • Universal Waste Management • Used Oil • Waste Water Management |
|---|---|

Commercial Services EnviroCheck Sheets (see Appendix 4) have been developed to augment the NPS EAP protocols, and focus on concession service types (e.g., food and beverage services). They refer to applicable NPS EAP EnviroCheck Sheets for each concession service type, and provide additional requirements unique to concession facilities and services. The concession service types addressed by Commercial Services EnviroCheck Sheets are identified in Exhibit 2. Note: the Commercial Services EnviroCheck Sheet for evaluating a concessioner’s EMP is applicable to all concession service types.

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EXHIBIT 2: COMMERCIAL SERVICE ENVIROCHECK SHEET TOPICS

- | | |
|---|--|
| <ul style="list-style-type: none"> ● Campgrounds and Trailer Villages ● Food and Beverage Service ● Environmental Management Systems ● Gas and Service Stations ● Golf Courses ● Guide and Outfitter Services ● Horse, Mule, and Animal Husbandry Operations ● Laundry, Swimming Pool, Shower, and Bathhouse Operations | <ul style="list-style-type: none"> ● Lodging Management ● Marinas and Watercraft Rental Operations ● Medical Clinics ● Retail Operations ● Tennis Courts ● Transportation Operations ● Water Guide Services ● Winter Sports Operations |
|---|--|

Audit Frequency and Period under Review

The audit frequency for each concession is every three to five years (contingent upon funding availability). Auditors are required to review only those activities that occurred during the predetermined period of time: the period under review. The audit period under review is used to balance interest in obtaining an adequate review of concession facilities and operations with the need to limit audit scope because of time and resource constraints.

- **Baseline Audit Period under Review.** The period under review for baseline (initial) audits of concessions is January 1st of the previous calendar year to the last day of the audit site visit or telephone audit. For example, a baseline concession audit occurring August 15-19, 2011, would have a period under review of January 1, 2010, through August 19, 2011.
- **Routine Audit Period under Review.** The period under review for routine audits (i.e., audits of concessions conducted after the baseline audit), in which the business has not changed since the last environmental audit, is the first day after the previous audit concluded to the last day of the present audit. For example, a routine concession audit occurring August 15-19, 2011, with a baseline audit that occurred October 10-14, 2007, would have a period under review of October 14, 2007, through August 19, 2011.

The Environmental Audit Team

This section describes the roles and responsibilities of the audit team and the audit team support staff as they relate to the Coordinator, the audited entity (i.e., the concessioner), and park staff involved in

concession management. (A checklist of park staff and concessioners' roles and responsibilities is included in Appendix 1.)

Roles and Responsibilities

Before discussing the roles and responsibilities of the audit team and audit team support, it is important to understand some of the roles and responsibilities of the Coordinator, given that the Coordinator is the primary Commercial Services point of contact (POC) for all environmental audit related issues. Some of the Coordinator's roles and responsibilities as they relate to the audit team are described in Exhibit 3 below.

EXHIBIT 3: COORDINATOR RESPONSIBILITIES

The Coordinator is the primary POC for all Commercial Services environmental audit-related issues, and therefore should be apprised of all notable environmental audit issues that are encountered. Responsibilities of the Coordinator include:

- Notifying park staff of upcoming environmental audits;
- Confirming the audit scope, including the concession to be audited, and audit type (i.e., standard vs. non-standard audit);
- Acting as initial POC between the audit team and park staff;
- Responding to audit issues as they are presented by the audit team;
- Receiving, reviewing, approving, and distributing the Preliminary Audit Report;
- Receiving, reviewing, approving, and distributing the Final Audit Report;
- Soliciting feedback from concessioner, park, and NPS regional staff on the audit process;
- Soliciting corrective action completion status reports from park staff on a periodic basis, at least once a year; and
- Serving as the POC regarding follow-up on corrective action implementation.

The audit team, which should be composed of at least an ATL and an auditor, is responsible for conducting an audit in accordance with the Guide. This includes evaluating concession operations as required under the audit scope, and preparing the audit report.

As representatives of Commercial Services, the audit team members are also responsible for meeting the following goals:

- Conducting the audit as an open process and disclosing all that is found, and adhering to the most current confidentiality policies;
- Promoting education and awareness to concession and NPS staff at the audited entity, wherever possible; and
- Promoting lessons learned from other environmental audits.

The roles and responsibilities of audit team members are described in Exhibit 4 below.

EXHIBIT 4: AUDIT TEAM RESPONSIBILITIES AUDIT PROGRAM MANAGER

The Audit Program Manager is responsible for the day-to-day management of the environmental audit program. The Audit Program Manager oversees the overall processes, scheduling, template development, and auditor assignments. Responsibilities include:

- Coordinating the development of the audit schedule;
- Approving audit team sizes and audit team members;
- Developing and approving audit budgets; and
- Ensuring audit team participants, including the ATL, are qualified to conduct the audit of the concession to which they are assigned;

ATL

The ATL serves as the primary POC between the audit team and the Coordinator, and between the audit team and park staff. As the person ultimately responsible for successful audit completion in accordance with the Guide, the ATL must be on site during the entire audit site visit for standard audits, and participate in all significant interviews for telephone audits. Responsibilities include:

- Developing a detailed audit logistics plan, to include audit schedule and scope, with park staff;
- Ensuring applicable audit criteria have been identified, including researching possible more stringent state and local laws and regulations as well as NPS regional and park policies, and documenting these in a regulatory summary;
- Reviewing the concession contract and developing (or coordinating the development of) a summary to help understand general concession operations, and identifying key environmental requirements;
- Assigning responsibility for covering audit criteria and audit protocols (i.e., EnviroCheck Sheets) to members of the audit team;
- Coordinating travel logistics for the audit team;
- Preparing, or coordinating the preparation of, the In-Brief and Exit-Brief presentations;
- Ensuring all relevant pre-audit data is collected—such as the regulatory summary, concession contract summary, and audit logistics plan—and distributed to the audit team for review;
- Managing audit activities, such as executing site visit logistics or coordinating telephone interviews;
- Managing the audit budget, as provided by the Audit Program Manager;
- Contributing to the audit team as an auditor;
- Reviewing and verifying audit findings and recommended corrective actions developed by the auditors;
- Preparing and submitting the Preliminary Audit Report to the audit handler in a timely manner;
- Coordinating and participating in the audit comment teleconference between park staff, concession staff, and the audit team;
- Preparing and submitting the Final Audit Report to the audit handler in a timely manner; and

- Submitting all documentation to the audit handler for inclusion in the official concession audit file (including field notes).

AUDITOR

Auditors are responsible for supporting the ATL in successfully completing the audit. Responsibilities include:

- Following ATL directions;
- Reviewing pre-visit information distributed by the ATL;
- Reviewing assigned audit criteria, audit protocols, and applicable state and local regulations;
- Confirming travel and lodging reservations;
- Gathering audit evidence;
- Providing the ATL with supportable audit findings and recommended corrective actions for the areas to which they are assigned;
- Providing assistance or input to the ATL in addressing park or concessioner comments on the Preliminary and Final Audit Reports; and
- Providing all necessary audit documents, including field notes, to the ATL for inclusion in the official concession audit file once the Final Audit Report is submitted.

AUDIT HANDLER

Audit handlers are responsible for supporting the audit team in successfully completing the audit. Responsibilities, as requested by the audit team, include:

- Assisting in the preparation of pre-audit documentation;
- Assisting in the gathering of all relevant pre-audit data—such as the regulatory summary, concession contract summary, and audit logistics plan—and distributing it to the audit team for review;
- Assisting in the preparation of the Preliminary Audit Report and transmittal documents;
- Posting the Preliminary Audit Report to the Commercial Services Audit SharePoint site;
- Developing email communication for the Coordinator to distribute;
- Participating as requested by the ATL during the audit comment process;
- Assisting in the preparation of the Final Audit Report and transmittal documents;
- Transmitting the Final Audit Report to the Coordinator for distribution; and
- Receiving all audit documentation for inclusion in the official concession audit file.

Audit team support members are optional additional staff who may assist the audit team during any step of the audit process. Since they may not have the training, experience, and/or qualifications of audit team members, they are considered audit team support.

The roles and responsibilities of audit team support are described in Exhibit 5.

EXHIBIT 5: AUDIT TEAM SUPPORT RESPONSIBILITIES OBSERVER

Observers may be present during the audit process for different reasons, but are not considered part of the audit team. Observers may be auditors-in-training, technical experts who are not qualified to be auditors, or others, such as NPS staff from another park or the WASO. Any finding noted by observers must be physically observed by an auditor on the audit team and reviewed by the ATL prior to being included in a Preliminary Audit Report.

- An auditor-in-training works with the audit team to improve their understanding of the environmental audit process, environmental regulatory criteria, BMPs, and sustainable practices as they apply to concessions. They receive instruction and direction from the ATL.
- Others, such as WASO staff, NPS staff from other parks, or the Coordinator, may be present during the audit process to learn more about how concession audits are conducted or to evaluate the audit team's performance.

REVIEWER

Reviewers conduct a quality check of the Preliminary and Final Audit Reports prior to the report being sent to the Coordinator, and are responsible for:

- Conducting a technical quality review on Preliminary and Final Audit Reports;
- Conducting an editorial quality review on Preliminary and Final Audit Reports; and • Submitting reviewed Preliminary and Final Audit Reports to the ATL in a timely manner.

Qualifications

Only qualified audit team members participate in environmental audits. Audit team qualifications include technical knowledge, training, and proficiency in the NPS EAP EnviroCheck Sheets, Commercial Services EnviroCheck Sheets, and additional Commercial Services audit protocols and procedures not included in the Commercial Services EnviroCheck Sheets. The qualifications of the assigned audit team should be commensurate with the scope and location of the audit and the specific intricacies of the concession operation and contract requirements.

Audit team members must be independent of the concession being audited. For the purpose of Commercial Services, 'independence' means that the audit team member is not providing and has not provided services to the concessioner (i.e., through parent company management, or other relationship) that could influence the objective environmental assessment of the concession. Audit team members must maintain the following personal attributes and skills:

- Objectivity
- Diplomacy skills
- Independence
- Familiarity with operations being
- Knowledge of audit criteria reviewed
- Technical credibility
- Competence with environmental audit

- Communication skills tools and techniques

Environmental auditors must also have Commercial Services-approved training and environmental audit experience, as summarized in Exhibit 6. The Audit Program Manager is responsible for confirming whether an individual meets these qualifications.

EXHIBIT 6: ENVIRONMENTAL AUDIT TEAM QUALIFICATIONS ATL

Training/Experience	Other Qualifications
<ul style="list-style-type: none"> • 32-hour environmental audit training, or equivalent documented experience on Commercial Services environmental audits and NPS EAP. • Annual refresher on Commercial Services environmental audits, or equivalent documented experience that includes any NPS EAP updates. 	<ul style="list-style-type: none"> • Exceptional understanding of Commercial Services environmental audits, including scope, benefits, regulatory risks, and legal issues. • Strong knowledge of Commercial Services and associated policies and procedures. • Strong knowledge of NPS concession operations and associated environmental considerations. • Thorough understanding of regulatory requirements addressed in the NPS EAP and Commercial Services EnviroCheck Sheets. • Proven ability to lead a team and manage a budget.

AUDITOR

Training/Experience	Other Qualifications
<ul style="list-style-type: none"> • 32-hour environmental audit training, or equivalent documented experience on Commercial Services environmental audits and NPS EAP. • Annual refresher on Commercial Services environmental audits, or equivalent documented experience that includes any NPS EAP updates. 	<ul style="list-style-type: none"> • Familiar with Commercial Services environmental audit scope, benefits, risks, and legal issues. • Familiar with regulatory requirements addressed in the NPS EAP EnviroCheck Sheet and the particular Commercial Services EnviroCheck Sheet that the auditor has been assigned to use.

Audit team support members who are observers must have all of the personal attributes and skills listed above if they have contact with park or concession staff. They must be aware of their limited role in the audit.

Audit team support members who are reviewers must understand how the Preliminary and Final Audit Reports are developed and must be familiar with auditing processes and editing techniques.

III. CONDUCTING A STANDARD ENVIRONMENTAL AUDIT

This section of the Guide describes how the Coordinator and the audit team conduct a standard environmental audit. Preparations that park and concession staff should take to participate in an environmental audit are described in Appendix 1.

Pre-Visit Activities

The audit process begins with scheduling concession audits (i.e., developing the annual audit schedule) at the beginning of the fiscal year. Preparation for each audit site visit begins several weeks in advance of the site visit, and includes contacting the region, parks, and concession staff; collecting pre-visit data; confirming the audit scope; arranging audit logistics; preparing the In-Brief presentation; and conducting pre-visit final preparations. Exhibit 7 provides a timeline for pre-visit activities, which is also provided in the Pre-Visit Checklist in Appendix 5 of this Guide. Detailed information on the pre-visit process is provided in the subsections below.

EXHIBIT 7: PRE-VISIT TIMELINE

Timeline	Responsible Party and Task(s)
6 weeks before site visit	<p>Coordinator</p> <ul style="list-style-type: none"> Notify the park POC that pre-visit materials (including the Audit Questionnaire [AQ]) are available on the Commercial Services audit SharePoint site.
6 weeks before site visit	<p>ATL</p> <ul style="list-style-type: none"> Confirm audit dates and audit scope with park POC; Ensure the most current concession contracts, including operating plans and maintenance plans, are available; Coordinate site visit logistics with park POC; Arrange audit team travel plans (e.g., flights, lodging, car rentals); Assign audit criteria to auditors; and Develop audit logistics plan.

2 weeks before site visit	<p>ATL</p> <ul style="list-style-type: none"> • Ensure completed AQ and other pre-visit information is available on the Commercial Services audit SharePoint site (Park POC will have saved this information on the site as appropriate); • Finalize audit team travel plans (e.g., flights, lodging, car rentals); • Prepare In-Brief; • Review concession contract and develop summary of key environmental requirements; forward to auditors; and • Prepare state/local/park/NPS regional environmental regulatory and policy summary; forward to auditors.
1 week before site visit	<p>Auditors/ATL</p> <ul style="list-style-type: none"> • Review AQ, concession contract summary of key environmental requirements, state/local/park/NPS regional environmental regulatory and policy summary, and previous audit reports, if applicable; and • Review assigned audit criteria. ATL • Confirm auditors have reviewed required information; and • Confirm audit logistics with park POC.

EXHIBIT 7: PRE-VISIT TIMELINE

Timeline	Responsible Party and Task(s)
2 days before site visit	<p>ATL</p> <ul style="list-style-type: none"> • Ensure all documentation and equipment required for the site visit is available.

Contact Park Staff (6 weeks prior to the site visit)

Typically six weeks in advance of the audit, the Coordinator sends official notification to the park Superintendent of proposed environmental audit(s); a request for the following pre-visit data is included.

Audit Questionnaire: The AQ (Appendix 7) requests information on concession facilities, services, and operations, as well as environmental program information. The Coordinator sends pre-visit information request emails (Appendices 6) to the park POC. The park POC is responsible for pulling the AQ from the Commercial Services audit SharePoint site and distributing to each concession being audited, collecting the completed AQs, and saving them back to the Commercial Services audit SharePoint site no later than two weeks before the site visit.

Additional Information: In addition to the information requested in the AQ, there may be additional concession information helpful for completing the audit, which is either forwarded to the ATL prior to the site visit or is made available during the site visit. This type of information may include general

background information on the concession not found in the concession contract documentation as well as the concessioner's EMP. These documents should be delivered at least two weeks prior to the site visit.

Confirm Audit Scope (6 weeks prior to the site visit)

After the ATL has contacted the park POC and forwarded the AQ for the concessioner(s) to complete, the ATL contacts the park POC to confirm the audit scope in terms of the size and complexity of each concession's operations, audit type, and audit criteria.

Audited Entities: For concessions to be audited, as indicated by the Coordinator, the ATL identifies those concession facilities, services, and operations that fall under the audit scope. Facilities and operations that take place outside of park boundaries should not be audited unless they are specifically mentioned in the concession contract.

Audit Type: The ATL confirms that the standard audit type is appropriate for each concession. Any consideration for modifying the standard audit type to a non-standard audit type must be made in coordination with, and approved by, the Coordinator.

Audit Criteria: The ATL verifies that the audit team has the necessary qualifications in the audit criteria areas applicable to the concession being audited, including non-federal audit criteria. If the assigned audit team does not have the necessary qualifications, the ATL discusses potential changes to the audit team with the Audit Program Manager.

Audit Period under Review: The ATL confirms that the concession is undergoing a baseline or routine audit, as designated by the Coordinator, in order to establish the period under review. If it is unclear whether a concession should be undergoing a baseline or routine audit, the ATL works with the Coordinator and Audit Program Manager to make this determination.

Determine and Assign Applicable Audit Criteria (6 weeks prior to the site visit)

Identifying applicable audit criteria is based on the ATL's understanding of the concession operation. The ATL assigns auditors responsibility for applicable environmental topic areas and concession service types based on their qualifications. The ATL may assign secondary responsibility for applicable environmental topic areas and concession service types for instances in which large and/or complex concession operations may require that the audit team split into sub-teams during the site visit, or in order to ensure that all applicable data is collected.

The ATL should also inform auditors as to whether a routine audit is to be conducted. If this is the case, the ATL should forward a copy of the Final Audit Report from the previous audit to the auditors.

Applicable audit criteria categories include the following:

- **NPS EnviroCheck Sheets:** The ATL will obtain the most current set of NPS EnviroCheck Sheets, organized by environmental topic area, to be used for the site visit. Based on their

understanding of concession operations, the ATL can determine which NPS EnviroCheck Sheets may or may not be applicable.

- **Commercial Services EnviroCheck Sheets:** The ATL will obtain the most current set of Commercial Services EnviroCheck Sheets, organized by concession service type, and add them to the NPS EnviroCheck Sheets to be used for the site visit.
- **Current Federal Requirements:** Federal standards, such as laws, regulations, and EOs, are the basis for compliance-focused NPS and Commercial Services EnviroCheck Sheets and may change over time. Prior to each audit, the ATL should contact knowledgeable parties to determine whether they are aware of any federal regulatory, interpretative, or EO changes that have been implemented since the most recent update of the Guide, and forward this information to the audit team. Note: EOs clearly define federal facility requirements. Unless stated in the concession contract or stated in the EOs, EOs are not applicable to concessions.
- **State, Tribal, Regional, and Local Requirements:** Concessions may be subject to state, tribal, regional, and local requirements in addition to federal requirements. The ATL should determine how state, tribal, regional, and local regulations differ from federal standards. If the more stringent state, tribal, regional, or local requirements apply, the ATL should forward this information to the audit team and ensure that they evaluate concessions against these more stringent criteria.
- **DOI and NPS policies and procedures:** These include DOI and NPS policies, such as NPS *Management Policies* and DOs. Unlike EOs, DOI and NPS policies always apply to concession activities. The ATL should determine if new DOI or NPS policies and procedures have become effective since the most recent update of the Guide, and forward this information to the audit team.
- **Concession Contract:** The concession contract, including certain exhibits such as the operating and maintenance plans, may have specific environmental requirements for concessions pertaining to solid waste management, hazardous materials management, emergency response, and pesticide management, among other topic areas. The ATL should obtain the most current versions of the concession contracts, including exhibits, and develop a summary of environmental requirements for the audit team.
- **Other Requirements:**
 - In some cases, concession requirements may be located in documents other than those listed above, including, but not limited to, the Superintendent's Compendium, park General Management Plan, park memoranda, or park SPCC Plan. The ATL should work with the park POC to identify, obtain, and review these documents prior to the environmental audit site visit.

- Park-approved documents may also specify concession environmental requirements. Such documents may include, but are not limited to, the concessioner EMP, concessioner SPCC Plan, or concessioner Integrated Pest Management Plan. The ATL should obtain these documents from the park POC prior to the audit and have the audit team review them in advance of the site visit.

Develop Audit Logistics Plan (6 weeks prior to the site visit)

The ATL, in consultation with the park POC, develops an audit logistics plan (see Appendix 8) summarizing the environmental audit purpose, concession(s) to be audited, period under review, auditors assigned, audit criteria responsibilities, site visit schedule, and travel logistics.

The site visit schedule section of the audit logistics plan provides the opportunity to prioritize site visit activities based on potential environmental risk (e.g., more time may be spent at a lodging operation than a bicycle rental facility). The audit team will review all concession operations with the potential for environmental liability. The level of effort expended at different facilities and concession operations is based on the ability of that review to help achieve Commercial Services goals, and the complexity of the operation and its potential to impact the environment. For example, dividing an audit team comprised of four or more members into smaller teams may be required to complete all site visit work within the limitations of the site visit schedule. It is desirable to have smaller teams of two (never one), so that concession staff are not overwhelmed by the number of auditors. Each smaller team should have adequate qualifications, and the ATL should designate a secondary ATL for each smaller team. For parks where there are multiple concessions, an audit team of four or more auditors might be divided by concession; in the case of a large concession with multiple facilities, services, and operations at multiple locations, the audit team might be divided based on service types or locations.

The ATL should inquire of the park POC as to audit team workspace availability; room availability for presentations; copier, fax, telephone, and internet access; and park and concession operating hours during the site visit. If meeting space and other items are not available, the ATL should coordinate with the park POC to consider alternate solutions for portions of the site visit that require these types of spaces and resources.

Audit team travel logistics such as flights, rental cars, and lodging should be included in the audit logistics plan for easy reference by the audit team. It is recommended that travel logistics be arranged in advance, especially when lodging may not be available due to seasonal demands. It is appropriate for the audit team to stay at lodging provided by the concession that is being audited, provided no special treatment is accepted by the audit team.

The ATL should make the audit logistics plan available for review by the Audit Program Manager and/or Coordinator. The audit logistics plan is an organizational tool for the audit team and does not necessarily need to be communicated to other individuals, except for the schedule, which should be discussed with the park POC.

Prepare In-Brief (2 weeks prior to site visit)

The ATL prepares an In-Brief presentation for both park and concession staff. The presentation provides background information about the audit team, communicates the objectives of the environmental audit, and describes the audit scope, schedule, and reporting process. Depending on the audit schedule, the ATL may need to prepare separate In-Brief presentations for park staff and concession staff. A model In-Brief presentation is found in Appendix 9 of this Guide.

Complete Audit Team Preparations (1 week prior to site visit)

At least one week before the site visit, the ATL should conduct a final check to ensure that auditors are prepared for the site visit. The ATL should:

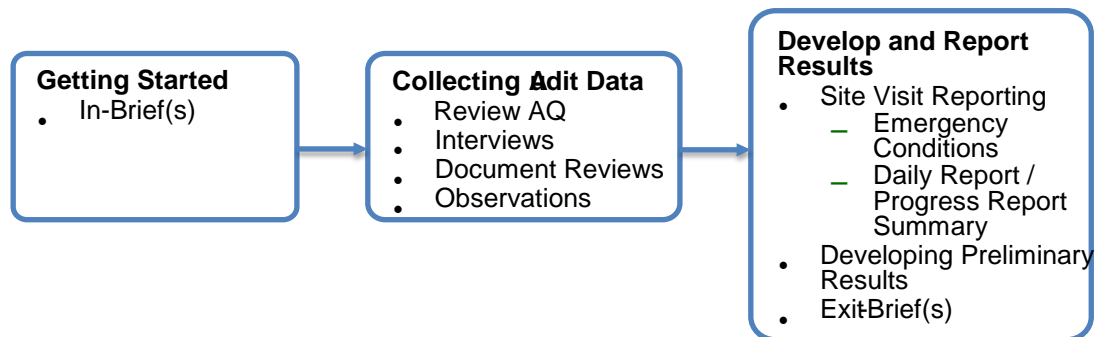
- Contact the park POC to ensure that park and concession staff are ready for the site visit;
- Ensure audit logistics are finalized;
- Check that auditors understand their roles and responsibilities;
- Ensure auditors have reviewed the completed AQ, concession contract environmental requirements summary, environmental regulatory and policy summary, assigned audit criteria (i.e., NPS and Commercial Services EnviroCheck Sheets), the Final Audit Report for the previous audit completed (if appropriate), and other information forwarded for review; and
- Ensure that the following is available during the site visit:
 - Equipment: auditor notebooks, cameras, computers, and projector;
 - Hardcopy documents: In-Brief presentation and sign-in sheets; and
 - Electronic files: In-Brief presentation, blank databases, NPS and Commercial Services EnviroCheck Sheets, concessioner contract, Exit-Brief template presentation.

Site Visit Activities

The site visit is the most intensive portion of a standard environmental audit; the audit team has the most interaction with concession and park staff during this phase of the audit. The site visit is not simply an inspection of concession facilities, services, and operations; it should be regarded as an exchange of information between the audit team, park staff, and concession staff. The audit team works to understand each concession's compliance issues and to identify BMP opportunities, while at the same time sharing knowledge with concession and park personnel on environmental issues and corrective action opportunities.

There is no specific timeline for completion of the environmental audit site visit because time spent on site will vary based on the size of the audit team, the number of concessions to be audited, and the size, complexity, and location of each concession. Typical audit site visits for multiple concessions are completed in a week or less. It is rare for an audit site visit to extend beyond one week. An overview of site visit activities is given in Exhibit 8.

EXHIBIT 8: ENVIRONMENTAL AUDIT SITE VISIT PROCESS



Conduct In-Brief

The site visit begins with an In-Brief presentation, which provides an opportunity to introduce the audit team to park and concession personnel, orient the park and concessioner(s) to the environmental audit process, and allow the audit team to get to know and gather general information on the park and concession (s). The In-Brief presentation specifically covers the following information:

- Relationship between the environmental audit program and Commercial Services;
- Identification of concessions to be audited;
- Background information on audit team members;
- Audit purpose and objectives;
- Audit criteria and period under review;
- Audit scope and process;
- Audit site visit schedule and logistics;
- Audit report process and schedule; and
- Assistance resources available from Commercial Services.

The In-Brief presentation should take no longer than one hour. The audit team should use the In-Brief presentation as an opportunity to confirm the site visit schedule with park and concession staff, to ensure that it is feasible. Changes may be needed to accommodate concession staff schedules and to account for new information on the size and complexity of concession facilities, services, and operations, as well as logistical considerations and other unanticipated issues. The audit team should not start the detailed data collection phase of the site visit during the In-Brief presentation.

It is best if the ATL and park POC can coordinate a single In-Brief presentation for all applicable park and concession personnel (see Exhibit 9 for a list of required and recommended individuals to attend the In-Brief presentation) to minimize audit team time spent in meetings. (Usually, this meeting occurs at park headquarters.) In cases in which not all parties are available at the same time for the In-Brief presentation, or in which travel to the meeting location may be a hardship for concession staff, additional In-Brief presentations may be scheduled. In these instances, a separate In-Brief presentation should occur upon arrival at the concession facilities, prior to conducting audit interviews, document reviews, and inspections. Note: if presenting a separate In-Brief at a concession facility, the audit team may want

to consider providing an informal presentation instead of the formal presentation given to park staff at headquarters.

EXHIBIT 9: IN-BRIEF AND EXIT-BRIEF ATTENDEES

TITLE	PRESENCE REQUIRED OR RECOMMENDED
Audit team	Required
Auditor-in-training	Required
Park Superintendent	Highly Recommended
Park POC	Required
Park Concession Chief	Highly Recommended
Other park concession personnel	Recommended
Other park personnel	Recommended
Concession POC(s)	Required
Concession Environmental Manager(s)	Required
Concession Facilities Manager(s)	Highly Recommended
Concession General Manager(s)	Highly Recommended

While it is recommended that others attend the In-Brief to maximize educational opportunities and to ensure logistical coordination, it is not required. The ATL should request that all In-Brief presentation attendees fill out a sign-in sheet that includes each attendee’s name, title, organization, telephone number, and email address.

Collect Audit Data

After the In-Brief presentation, auditors typically start collecting audit data by traveling to each concession location according to the site visit schedule.

Site Visit Schedule: The key to a successful audit is flexibility. It is not uncommon for plans to change several times during the period of the audit site visit. If any site visit schedule changes are made, ***the park POC and affected concession staff should be notified as soon as possible.***

Audit Questionnaire Review. Before beginning the detailed audit data collection process by observing concession operations, it is often useful to review the concession AQ with the concession POC and other relevant concession personnel. The AQ review allows auditors to obtain clarification on information contained in the document, such as the concession’s hazardous waste generator status. Auditors should avoid allowing discussions to get bogged down in data collection at this point, as data collection might be

more efficient to conduct during observations of concession operations. If the audit team is not careful, what is planned as a simple overview and clarification exercise can take longer than expected, which can compromise the site visit schedule and leave the concessioner and park POC feeling frustrated with the audit process from the start.

Collecting Detailed Audit Data: There are three ways in which audit data are gathered:

- Physical observations;
- Interviews; and
- Record and document reviews.

Each of these data collection methods, discussed in more detail in the subsections below, is used to develop supportable audit conclusions that may eventually be written as audit findings. At least two of the three data collection methods listed above should be used in generating audit conclusions. The NPS EAP and Commercial Services EnviroCheck Sheets provide guidance on applicable areas, staff to interview, and records to review.

While EnviroCheck Sheets have been assigned to each audit team member during pre-visit planning, it is likely that during the site visit, information relevant to another auditor's EnviroCheck Sheets will be discovered. This information should be recorded by the auditor who discovered it and passed along to the auditor responsible for the EnviroCheck Sheet at the earliest opportunity.

Physical Observation: Auditors observe assigned buildings and lands, storage areas, and work practices and operations. Auditors should record detailed information on each observation that does not appear to meet the audit criteria. This information includes specific locations where the observations were made, clear descriptions of what was observed, and quantitative data on issues observed (e.g., numbers and sizes of containers). Auditors should take photographs of key observations, trying not to photograph individuals if they are not needed to demonstrate the key observation.

When conducting data gathering through physical observations, auditors must use prudent and safe work practices. They must not enter unsafe areas (e.g., unstable buildings, confined spaces, or areas with potentially uncontrolled physical or chemical hazards). Auditors should try not to disturb materials and equipment they are observing; instead, they should ask concession staff to move pieces of equipment or containers if necessary to inspect them. Auditors should ask if it is acceptable to go into new areas or to open cabinets and lockers.

If a concession staff member indicates that an area cannot be inspected due to safety or security concerns, because it is a personal rather than a company area, or for any other reason, the auditor should accept this explanation, document the issue in his or her notebook, and move on. If the auditor feels entry into the area is within the scope of the audit and is important for the integrity and completeness of the environmental audit, the issue should be discussed with the ATL so that it can be elevated for consideration by the park POC, concession POC, and their respective managers, if necessary. For general reference, it is appropriate to inspect employee housing common areas. It is also appropriate to inspect

employee housing personal areas if a concern has been raised and the park POC or concession POC requests that this inspection take place.

Interviews: Auditors conduct interviews with concession staff to gather information on concession facilities, services, and operations. Interview objectives are to:

- Discuss employee responsibilities to understand the degree to which they are defined and delegated;
- Understand how environmental programs are implemented;
- Confirm implementation of concessioner-documented policies and SOPs;
- Assess concessioner training effectiveness;
- Educate concession staff on how environmental performance can be improved; and • Verify issues identified from physical observation or record and document reviews.

Auditors should document the name and title of the person interviewed and attempt to document their contact information (e.g., telephone number and email address). Guidelines for conducting interviews are shown in Exhibit 10.

EXHIBIT 10: INTERVIEW GUIDELINES	
SUGGESTION	EXAMPLE
Ask both open ended and specific questions.	<p>Open-ended: “Can you please describe what happens when you change the oil?”</p> <p>Specific: “If I understand you correctly, you carry an open five-gallon bucket across the driveway, and then pour it into the 250-gallon tank, right?”</p>
Avoid leading questions.	<p>Leading question: “You don’t mix anything with the used oil, do you?”</p>
Obtain definitive answers to questions.	<p>Ask different individuals the same question: Ask all employees whether they have received spill response training.</p> <p>Ask the same question in different ways: “Have you received spill response training?”; “Did someone here teach you how to respond to a fuel spill?”</p>
Avoid questions of judgment or blame.	<p>Judgment/blame question: “So it’s your fault that the hazardous waste storage area is a mess, right?”</p>

Record and Document Reviews: Auditors review concession records and documents in order to:

- Assess compliance with current applicable laws; DOI, NPS, or park policy; and the concession contract;
- Understand the concessioner's EMP; and
- Verify the issues identified by interviews or observations.

Each NPS and Commercial Services EnviroCheck Sheet identifies records and documents that auditors should review as applicable. Key documents or portions of key documents may be copied for reference purposes. It is often useful to copy the cover page and table of contents of a document. ***Information contained in the records and documents reviewed should not be shared with other concessions.***

During the site visit, the auditor responsible for Commercial Services EnviroCheck Sheet on EMPs should conduct a review of the concessioner's EMP (if it exists) and should evaluate the EMP for compliance with concession contract requirements and applicable provisions of NPS *Management Policies*, Chapter 10. The same audit team member should also make observations, ask interview questions, and collect data to evaluate implementation of the EMP.

Recording Audit Data: All audit data is recorded by each auditor. Recorded audit information should be legible, written in ink, and recorded in a professional manner that maintains objectivity and avoids inflammatory language. Pages should be neatly removed from the notebook if necessary, and corrections should be neatly crossed out rather than scratched out or erased.

The front page of each notebook section for a specific concession should include the following information:

- Auditor's name;
- Company or agency representation (e.g., XYZ Consulting, Commercial Services);
- ATL's name;
- Auditors' names;
- Concessioner Identification Number (CONCID); and • Date(s) of site visit.

Each page within the notebook section for a specific concession should have the following information in the upper right-hand side:

- Auditor's initials;
- CONCID;
- Date of that particular page entry; and
- Page number/total pages (e.g.,5/22).

Photographs provide an excellent record to help document an audit conclusion. Each audit team should have a digital camera and should attempt to take photographs of all observations that support a preliminary audit finding or exceptional practice.

Providing Compliance Assistance while Collecting Data: While auditors are gathering information to develop audit findings, they should also educate concession and park staff on how other concessions have successfully addressed similar environmental issues, or offer ideas on how these issues could be addressed. However, auditors must remember that although Commercial Services has a strong interest in educating and providing assistance to concession staff during audits, this effort cannot be allowed to compromise the ability of the audit team to fully complete the audits. The audit team should ensure that they adhere to their site visit schedule in order to complete all concession audits; however, auditors should note compliance questions and information requested by concession staff and seek to assist them after the site visit. Note: providing compliance and BMP assistance does not preclude the concession from understanding and being in compliance with all applicable laws at all times.

Site Visit Reporting

Concessioner POCs, other concession personnel, and park personnel are often interested in obtaining information from the audit team firsthand during the audit. Because the audit process is an open exchange between auditors, park staff, and concession personnel, the audit team should point out preliminary audit findings, recommended corrective actions, and exceptional practices as they are identified, rather than waiting for distribution of the Preliminary Audit Report. Site visit reporting includes:

- Reporting emergency conditions;
- In-progress reporting to park and concession staff;
- Presenting the Exit-Brief; and
- Audit team debriefings.

Reporting Emergency Conditions: Emergency conditions include practices or situations that could reasonably be expected to cause death, serious physical harm to persons or the environment, or immediate loss of concession or NPS structures or resources before the danger can be eliminated through normal procedures. Emergency conditions may include past and present spills of hazardous substances to the environment, old and unstable chemicals, and imminent fire hazards, among others. The audit team should make no attempt to correct emergency conditions, but should immediately report them to the Superintendent, the park POC, and the responsible concession manager or supervisor. If possible, this report should be made by the ATL. If the ATL is not readily available, the auditor should report the concern so that information is provided in a timely manner.

If there is a release of oil or any hazardous substance to the environment in excess of the reportable quantity specified in federal regulations, the audit team must immediately notify the responsible concession manager, supervisor, or designee; the Superintendent; and the park POC. The responsible concession manager, supervisor, or designee in turn must call the **National Response Center (NRC) at 1-800-424-8802** as well as other appropriate regulatory agencies. If this does not occur, the audit team should tell the park POC to make this call. If this does not occur in a timely manner, the audit team should inform the Coordinator that they are notifying the NRC of the release, as required by regulation.

In-Progress Reporting: As preliminary audit findings, recommended corrective actions, and exceptional practices are identified by the audit team, they should be communicated verbally to the responsible concession staff and the park POC. This may occur informally in the field as data collection is occurring,

or during more formal debriefings to concession and/or park staff if scheduled (e.g., daily). If the audit team is not certain about details of a preliminary audit finding, recommended corrective action, or exceptional practice, they should still inform concession and park staff about these concerns, but add a caveat that additional research needs to be carried out.

Developing Preliminary Audit Findings, BMPs, and Exceptional Practices: Based on data collected, the audit team should develop preliminary conclusions in the field about concession operations related to audit criteria. These take one of three forms: audit findings, BMPs, and exceptional practices.

Audit Findings: Audit findings are developed when the audit team concludes that concession staff are not meeting compliance audit criteria. Audit findings are assigned a level of Priority 1, 2, or 3.

- Priority 1 audit findings represent non-conformances with laws and regulations that pose (i) immediate actual or potential harm to human health or the environment, or (ii) the potential for significant liability;
- Priority 2 audit findings represent non-conformances with laws and regulations that do not pose an immediate threat to human health or the environment; and
- Priority 3 audit findings represent non-conformances with DOI, NPS, or park policy, or with the concession contract, that do not pose an immediate threat to human health or the environment.

Priority 2 and 3 audit findings may be further assigned a ranking as an “isolated” instance. An isolated audit finding is a finding in which the nonconformance observed is isolated, and the majority of other operations, locations, or facilities comply with the audit criteria and demonstrate that the audited entity has made an effort and understands the audit criteria. For routine audits, Priority 1, 2, and 3 audit findings may further be designated as “repeat” audit findings. Repeat audit findings occur when the same issue is documented in both the current audit and previous audit, regardless of whether or not the citation is exactly the same.

Recommended corrective actions are developed for audit findings and describe the audit team’s recommended approach for addressing and closing audit findings. Recommended corrective actions should describe a method for reducing or eliminating the actual or potential harm to human health or the environment, and/or should provide the concessioner a roadmap for achieving compliance.

Recommended corrective actions may include additional helpful tips that the concessioner could implement to help achieve and maintain compliance. While the recommended corrective action describes how a concessioner could achieve compliance, the helpful tip is a related recommended strategy that may assist the concessioner in achieving compliance.

BMPs: BMPs are recommended practices from industry, regulatory agencies, or other sources, including the expertise of the auditors, that may result in improved compliance, pollution prevention, and/or minimized compliance responsibilities. BMPs may also help the NPS meet its goals of promoting environmental management, and demonstrate commitment to environmental stewardship and

sustainability. BMPs are not required to be implemented, but concession staff are strongly encouraged to implement them as a means to further protect park resources. The resources and time needed to implement BMPs varies; some may be implemented in the short-term with few resources, while others may be implemented if a longer timeline and more resources are available. BMPs identified by the audit team may not be technically and economically feasible at the time of the site visit; however, concession staff should continue to evaluate the feasibility of implementing the BMPs over time.

Note: while BMPs are important to note during the audit, they are not incorporated into the audit database as findings. BMPs that the concessioner has already implemented, as well as those suggested by the audit team, are incorporated into the Executive Summary of the audit report.

Exceptional Practices: Exceptional practices are products used or activities undertaken that are not often seen at park concession operations and that demonstrate a concessioner's commitment to environmental protection beyond compliance. Since they are exemplary practices that do not need to be corrected, there is no recommended corrective action associated with them. In addition, exceptional practices are approved by the Coordinator. This provides a final verification that the exceptional practice is truly exceptional that it is not a contract requirement or otherwise required of the concession operation and it is not common to other concession operations.

Audit Team Debriefings: Audit findings, BMPs, and exceptional practices developed during the site visit are considered 'preliminary' since they are developed based on information available in the field, when there may not be time or resources (e.g., internet access) available to research the applicability of specific audit criteria. Even so, the audit team should strive to provide the most accurate and complete information at this preliminary stage.

The process of developing preliminary audit findings, BMPs, and exceptional practices should be collaborative among auditors. This process typically occurs during audit team debriefings, which should take place periodically (e.g., at the end of each day) to discuss the day's activities, progress made relative to the site visit schedule, and any adjustments that may need to be made for the remainder of the site visit.

During the audit team debriefings, individual auditors should present their preliminary audit findings, BMPs, and exceptional practices for their EnviroCheck Sheet topic areas. If the audit team was split up into smaller teams during the day, auditors with primary responsibility for the same EnviroCheck Sheet should compare conclusions and determine if the preliminary audit findings, BMPs, and exceptional practices affect the concession programmatically or are limited to specific locations and types of operations. Auditors having secondary responsibilities and other individuals who may have gathered information on the same topic area should also provide input at this time, especially since some EnviroCheck Sheet topic areas overlap.

The results of this onsite collaboration should be a 'master list' of preliminary audit findings, BMPs, and exceptional practices that can be reported to park and concession staff during the Exit-Brief presentation. The master list can be used to assist in developing the audit findings during the post-visit portion of the audit. It is highly recommended that the audit team, to the greatest extent possible, strive to develop

audit findings, BMPs, and exceptional practices during the site visit, since the issues are fresh in auditors' minds. Development and documentation of audit findings, BMPs, and exceptional practices is a formal and rigorous practice. A complete description of this process can be found in Appendix 12.

Presenting the Exit-Brief: The final site visit activity is the Exit-Brief presentation. During the Exit-Brief presentation, the audit team gives a more formal presentation of preliminary audit findings and associated recommended corrective actions, BMPs, and exceptional practices observed during each individual concession site visit.

Unlike the In-Brief presentation, which may be handled in a single meeting with all concession staff from different operations and park participants in attendance, a separate Exit-Brief presentation should take place for each concession, so that audit findings, BMPs, and exceptional practices can be discussed in confidence. One summary Exit-Brief presentation highlighting higher priority audit findings, viable BMPs, and exceptional practices should be developed for the park Superintendent, who most likely will not be able to attend each concession's Exit-Brief presentation. Each Exit-Brief presentation should be no more than one hour long. Larger, more complex concession operations may have longer Exit-Brief presentations due to questions from the audience; the ATL should take this into account when scheduling Exit-Brief presentation times with the park POC.

Key topics that should be covered during the Exit-Brief presentation include:

- Concessions and associated facilities, services, and operations that were audited;
- Audit criteria applicable to concessions;
- Audit findings and associated recommended corrective actions;
- BMPs;
- Exceptional practices;
- Open issues;
- Audit reporting process and schedule; and
- Assistance resources available from Commercial Services.

The audit team should summarize important issues and avoid detailing every preliminary audit finding, BMP, and exceptional practice during the Exit-Brief presentation. However, the audit team should be ready to provide more details upon request as well as compliance and BMP assistance for areas of particular interest to concession or park staff.

For some smaller concessions and/or in instances in which scheduling and logistical concerns exist, a formal Exit-Brief presentation may not be necessary. Instead, the audit team can choose to present an informal Exit-Brief at the end of a site visit. An informal Exit-Brief simply involves a wrap-up discussion following the collection of audit data, touching on what concession staff may expect to see in the environmental audit report.

A copy of the Exit-Brief presentation that includes information on preliminary audit findings, BMPs, and exceptional practices **should not** be given to park or concession staff, as they are not final audit findings and should not be presented as such.

During the Exit-Brief presentation, be sure to provide a sign-in sheet or otherwise document attendance. Generally many of the same individuals attend both the in brief and the exit brief, in that case simply noting attendance is sufficient. Individuals that did not attend the in brief should provide their name, title, organization, telephone number, and email address.

Individuals who are required or recommended participants at the Exit-Brief presentation are the same individuals required or recommended to participate in the In-Brief presentation. These individuals are identified in Exhibit 9, which appeared earlier in this section. A sample Exit-Brief presentation is provided in Appendix 10 of this Guide.

Post-Visit Activities

Post-visit activities may stretch out over many months. They involve preparing the Preliminary Audit Report(s); soliciting and responding to comments on the Preliminary Audit Report(s); and preparing the Final Audit Report(s). Exhibits 11 and 12 lay out the key elements of post-visit activities. The timeline in Exhibit 12 represents the standard timing for the post-visit process.

The process is standardized so that schedules are consistent among all environmental audits, and there is a clear endpoint to the audit report process. Although the steps in the post-visit process should not substantially change from one audit to the next, it is possible for the schedule to vary depending upon specific circumstances. Details on the post-visit process are provided in the subsections that follow.

EXHIBIT 11: ENVIRONMENTAL AUDIT POST-SITE VISIT PROCESS

Preliminary Audit Report	<ul style="list-style-type: none"> • Resolve open issues; and • Develop and submit Preliminary Audit Report.
Comment Period	<ul style="list-style-type: none"> • Solicit concession and park staff comments on Preliminary Audit Report.
Final Audit Report	<ul style="list-style-type: none"> • Document and incorporate concession and park staff comments; and • Develop and submit Final Audit Report.

EXHIBIT 12: STANDARD AUDIT PROCESS – POST-VISIT TIMELINE	
TIMELINE	RESPONSIBLE PARTY AND TASK(S)
Within 3 weeks of site visit	<p>Audit team</p> <ul style="list-style-type: none"> • Prepares audit findings, BMPs, and exceptional practices for Preliminary Audit Report, including closing open issues remaining from the site visit. <p>ATL</p> <ul style="list-style-type: none"> • Assembles and reviews Preliminary Audit Report; • Ensures Preliminary Audit Report undergoes a quality review; • Submits Preliminary Audit Report to audit handler; and • Posts Preliminary Audit Report on SharePoint and prepares transmittal document for Coordinator. <p>Audit handler</p> <ul style="list-style-type: none"> • Submits transmittal document to Coordinator. <p>Coordinator</p> <ul style="list-style-type: none"> • Sends notification of availability of PAR to park POC. <p>Park POC</p> <ul style="list-style-type: none"> • Reviews and approves Preliminary Audit Report; and • Sends Preliminary Audit Report to concessioner POC.
Within 5.5 weeks of site visit	<p>Park POC</p> <ul style="list-style-type: none"> • Coordinates comment teleconference date and time with concessioner and Commercial Services staff. <p>Concessioner POC</p> <ul style="list-style-type: none"> • Reviews Preliminary Audit Report and prepares to participate in comment teleconference. <p>ATL</p> <ul style="list-style-type: none"> • Leads comment teleconference. <p>Audit team support (auditor or audit handler)</p> <ul style="list-style-type: none"> • Documents park, concessioner, and Commercial Services staff comments on Preliminary Audit Report.

Within 7 weeks of site visit	<p>ATL</p> <ul style="list-style-type: none"> Addresses concession and park staff comments on Preliminary Audit Report; Prepares draft Final Audit Report; May submit a draft Final Audit Report to park and concessioner to review integrated comments; Ensures draft Final Audit Report undergoes quality review; Submits draft Final Audit Report to audit handler; and Posts FAR on SharePoint and prepares Final Audit Report transmittal document for Coordinator. <p>Park POC</p> <ul style="list-style-type: none"> Reviews draft Final Audit Report and provides any additional comments to the ATL. <p>Concessioner POC</p> <ul style="list-style-type: none"> Reviews draft Final Audit Report and provides any additional comments to the park POC.
Within 9 to 10 weeks of site visit	<p>Audit handler</p> <ul style="list-style-type: none"> Posts Final Audit Report on SharePoint and prepares transmittal documents for Coordinator. Coordinator Sends memo on behalf of Chief of Concessions to park Superintendent and carbon copies Regional Concession Chief, Regional Environmental Coordinator, and park POC; and Sends memo to park POC notifying them that the FAR is available on SharePoint. <p>Park POC and Park Superintendent</p> <ul style="list-style-type: none"> Sends Final Audit Report to concessioner POC.
Within 10 weeks of site visit	<p>Audit team</p> <ul style="list-style-type: none"> Submits all audit documents to audit handler (e.g., In-Brief and Exit-Brief presentations and sign-in sheets, auditor notebooks, concession documents gathered during the site visit).

Prepare and Submit Preliminary Audit Report

Developing Complete Audit Findings, Associated Recommended Corrective Actions, BMPs, and Exceptional Practices: The most time-intensive portion of post-visit activities is the development of well-documented and properly constructed audit findings, in addition to recommended corrective actions, BMPs, and exceptional practices. For instances in which an audit team has visited multiple concessions at one park, auditors should plan to spend a substantial portion of their time during the week(s) following the site visit, preparing audit findings for all concessions. The audit team must research and resolve open issues related to preliminary audit findings, BMPs, and exceptional practices identified during and after

the site visit in order to develop complete audit findings and associated recommended corrective actions, BMPs, and exceptional practices. The audit team may need to follow-up with teleconference interviews with concession staff to verify information collected during the site visit or obtain copies of concession documents to fill in data gaps. However, it is highly recommended that the audit team gather this information on site if possible. The audit team may also need to conduct additional research on federal, state, tribal, regional, local, or park requirements and interpretation. Some common federal environmental agency hotlines and information resources that the Audit Team may use in conducting its research are listed in Appendix 13.

Assembling the Preliminary Audit Report: The Preliminary Audit Report is a document in a portable document format (PDF) with multiple sections. The sections are the:

- Executive Summary;
- Priority 1, 2, and 3 Audit Findings;
- Exceptional Practices;
- Photos; and
- Assistance Resources.

Template Audit Report: The template audit report, presented in Appendix 11, is a Microsoft Word document that includes template wording for the executive summary and a framework for inserting photos and findings relevant to the Preliminary Audit Report.

The executive summary provides background information on Commercial Services; the audit scope; statistical data on concession audit findings, BMPs, and exceptional practices; and instructions for commenting on the Preliminary Audit Report. The photo section displays photographs taken during the audit site visit of audit findings and exceptional practices observed by the audit team.

Preliminary Audit Database: The audit database is a Microsoft Access file in which auditors can enter data to develop audit findings and exceptional practices. The reports in the database become the “Priority 1, 2, and 3 Regulatory Audit Findings,” “Exceptional Practices,” and “Assistance Resources” sections of the Preliminary Audit Report.

The ATL, with the assistance of the auditors, completes each concession’s Preliminary Audit Report and forwards it to the audit handler. Completion of the Preliminary Audit Report by the audit should occur within three weeks of the completion of the site visit.

Submitting the Preliminary Audit Report: The Preliminary Audit Report is preferably uploaded in electronic format to the SharePoint and the park POC is notified by the Coordinator. Upon receiving the report, the park POC should review it and provide any comments or changes to the audit team. Once the changes have been made by the audit team, the park POC forwards the Preliminary Audit Report to the concessioner POC immediately.

Comments on the Preliminary Audit Report

Concession and park staff have an opportunity to provide comments on the Preliminary Audit Report. Once the Preliminary Audit Report has been distributed, the park POC coordinates a teleconference to take place among park, concession, and Commercial Services staff. Alternatively, before the end of the site visit, the ATL can arrange a date and time for this teleconference. During the comment teleconference, the ATL will review each audit finding and offer any further explanation as to the basis for the audit finding or recommended corrective actions. Audit team support may participate on this teleconference to document comments for the ATL.

Based on the comment teleconference, the ATL responds to park and concessioner comments by making appropriate modifications to the Preliminary Audit Report, which becomes the draft Final Audit Report. Audit findings, associated recommended corrective actions, BMPs, and exceptional practices may be modified based on information provided.

Audit findings may be considered closed if concession staff have adequately addressed the audit finding of concern. Isolated audit findings that have been closed are removed from the Final Audit Report to demonstrate that Commercial Services recognizes the concessioner's understanding of and efforts to meet the audit criteria, even though a noncompliance was identified at the time of the audit.

However, Priority 1 audit findings are never removed from the Final Audit Report, even if they have been closed.

Audit findings may be voided if it is determined that the audit criteria were not correctly applied. Voided audit findings are not included in the Final Audit Report. Exceptional practices may also be voided if they are not applicable to the scope of the audit.

Prepare Final Audit Report

Assembling the Final Audit Report. Similar to the Preliminary Audit Report, the Final Audit Report is a PDF document with multiple sections.

The sections are the:

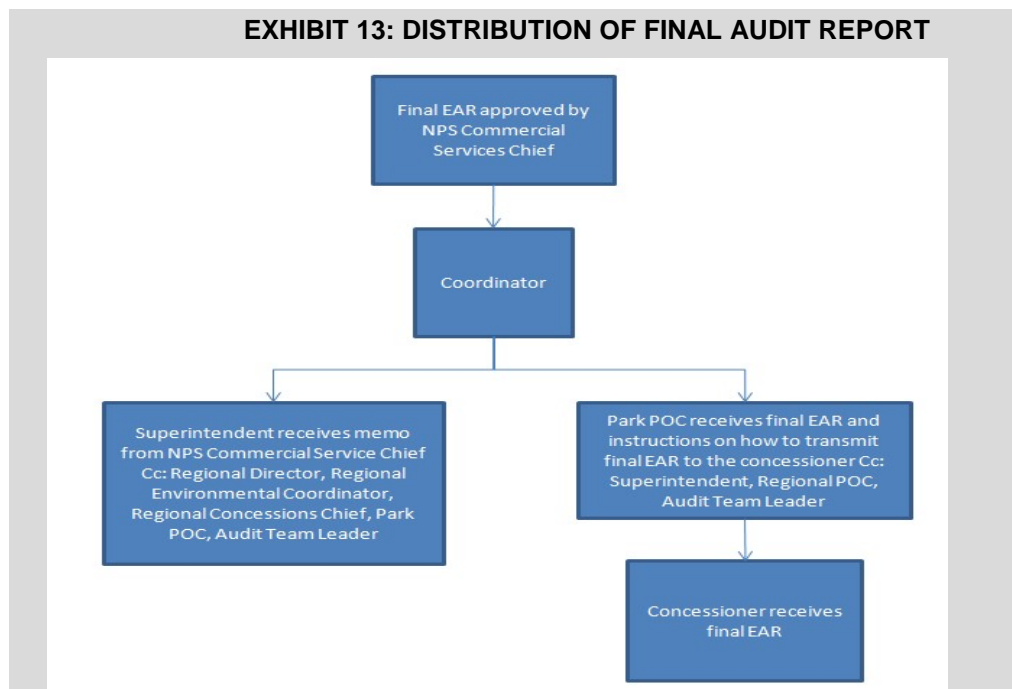
- Executive Summary;
- Priority 1, 2, and 3 Audit Findings with any applicable Preliminary Audit Report comments;
- Exceptional Practices;
- Photos; and
- Assistance Resources.

The ATL, with the assistance of the auditors and audit handler as requested, completes each concession's Final Audit Report and forwards it to the audit handler. Once completed, the audit handler forwards the Final Audit Report to the Chief of Concessions for review and approval.

Submitting the Final Audit Report: Once the Final Audit Report is approved by the Chief of Concessions, it is submitted electronically to park staff, and then to each concessioner through a formal routing process, described below. This process ensures that all parties are aware of the audit, that proper chain of command has been followed, and that associated chain of command emphasis can be applied to the importance of addressing audit findings.

On behalf of the Chief of Concessions, the Coordinator forwards a signed memo from the Chief of Concessions to the park Superintendent to apprise him/her of the completion of the Final Audit Report. The memo requests that the park Superintendent coordinate with the park POC to forward the Final Audit Report to the concessioner POC. The Regional Concession Chief, Regional Environmental Coordinator, and park POC are carbon copied on the correspondence to the park Superintendent.

At the same time the Coordinator forwards the memo signed by the Chief of Concessions to the park Superintendent. Additionally, the Coordinator advises the park POC that the Final Audit Report has been saved to the Commercial Services audit SharePoint site and requests that they coordinate with the park Superintendent in forwarding the Final Audit Report to the concessioner POC. As the last step, the park Superintendent, in coordination with the park POC, forwards the Final Audit Report to the concessioner POC. See Exhibit 13.



Turn in Notebooks and Documents to be Filed: The audit handler should coordinate the collection of auditor notebooks and all other audit-related documents (e.g., updated concession contracts, the AQ, and concession documents collected during the site visit) following distribution of the Final Audit Report for

each concession. If notebooks and audit-related documents are shipped to the WASO Denver office, they should be shipped via a tracked delivery method.

After the Environmental Audit

Distribution of the Final Audit Report completes the environmental audit, but does not complete the process. This is because it is a Commercial Services goal to close audit findings in order to close the audit, and concession staff are expected to inform park staff of progress made in taking corrective actions. After distribution of the Final Audit Report, the park POC is responsible for verifying whether concession staff have closed audit findings, as well as for forwarding these updates to the Coordinator. Once concession staff has closed all compliance audit findings, the audit as a whole can be closed.

Although auditors are not generally involved in the corrective action process, the Coordinator may occasionally consult with them, should questions or issues arise as concession staff work to close audit findings. Recommended corrective actions are primarily intended as guidance for park and concession staff.

IV. CONDUCTING A TELEPHONE ENVIRONMENTAL AUDIT

The telephone audit is a type of non-standard audit and may be used in place of a standard audit when approved by the Coordinator. The Coordinator and Audit Program Manager gather required information and make the determination to conduct a non-standard audit. Some of the criteria considered when making this determination include:

- Size and complexity of the concession operation (e.g., concession operations that have minimal or no facilities within in park boundaries, or concession operations that have minimal environmental impacts);
- Logistical issues (e.g., difficulty in conducting a cost-efficient standard audit due to remote location);
- Change in understanding of concession operations (e.g., it is determined that the concession operations are less complex than originally thought by Commercial Services in reviewing the contract); and/or
- Demonstration by the concessioner that they undergo regular, comprehensive environmental audits by a government-sanctioned third party (i.e., U.S. Coast Guard), and those regular audits cover, at a minimum, all Commercial Services audit criteria.

The process of planning and conducting telephone audits is similar to standard audits and can also be divided into three phases: pre-teleconference activities, teleconference, and post-teleconference activities. The audit team members are the same as well, the audit team in comprised of an ATL and an auditor. The steps involved in each of these phases are outlined below in Exhibit 14 and described in the subsections that follow.

EXHIBIT 14: TELEPHONE ENVIRONMENTAL AUDIT PROCESS

Notification	<ul style="list-style-type: none"> • Notify park staff of environmental audit; and • Forward AQ.
Confirmation and Preparation	<ul style="list-style-type: none"> • Receive and review AQ; • Confirm telephone audit scope; • Arrange audit logistics; and • Submit In-Brief presentation to park POC for distribution.
Audit	<ul style="list-style-type: none"> • Brief introduction; • AQ review; • Data collection, including: <ul style="list-style-type: none"> – Phone interviews; and – Record, document, and photo review; and • Conclude call.
Comments and Reporting	<ul style="list-style-type: none"> • Generate Preliminary Audit Report and Final Audit Report in same manner as a standard environmental audit, including the comment period for the Preliminary Audit Report.

Telephone Audit Pre-Teleconference Activities

Pre-teleconference activities for a telephone audit generally mirror pre-visit activities for a standard audit, and include notifying park staff of the audit, establishing the audit team, administering the AQ, refining and confirming the audit scope, and developing an audit logistics plan.

Confirm Audit Scope

The Coordinator and ATL make initial contact with the concessioner POC undergoing the telephone audit in the same manner and with the same objectives as those for standard audits. This involves checking in with park staff to notify them of the proposed environmental audit[s] and schedule, and obtaining general information on the scope of concession facilities, services, and operations in the park.

Determine and Assign Applicable Audit Criteria

Data are collected from concession staff undergoing the telephone audit primarily during the teleconference, although concession staff have the opportunity to submit any additional documentation or information in advance of the scheduled teleconference audit.

Audit Questionnaire (AQ): As with the standard audit, the will forward the AQ to the park POC, and the park POC will forward the AQ to the concession POC. However, the AQ for a telephone audit is simplified with questions tailored for the specific concession operation and contract being audited. The concession

POC has the option, but is not required to, return the audit questionnaire prior to the schedule telephone audit.

Additional Information: In addition to information requested in the AQ, concession staff may submit further information considered helpful for completing the audit, which will be forwarded to the ATL. This type of information may include general background information on the concession that is not found in the concession contract documentation as well as information on the EMP, if applicable.

Develop Audit Logistics Plan

After the Coordinator has contacted the park POC and forwarded a copy of the AQ for concession staff to complete, the ATL contacts the park POC to confirm the schedule and audit scope. At this time, the ATL also confirms that the telephone audit method, originally determined by the Coordinator during the planning process, is appropriate for the concession. Any decision to switch to the standard audit method must be made in coordination with, and with approval from, the Coordinator.

The ATL, in consultation with the park POC, confirms audit logistics. However, unlike a standard audit, the audit team can accomplish this task through discussions and email, rather than developing an audit logistics plan.

The most important logistical considerations for the telephone audit are arranging which concession personnel should be interviewed, and setting up the interview schedule.

Audit Criteria

Identifying applicable audit criteria and assigning auditor responsibilities for applicable environmental topic areas and concession service types is conducted in the same manner for telephone audits as it is for standard audits. The ATL assigns auditor responsibility for applicable environmental topic areas and concession service types based on their qualifications.

Teleconference Activities

Although there are no site visit activities for a telephone audit, it involves many of the same steps as the standard environmental audit, including presenting an abbreviated and informal In-Brief; collecting data; reviewing the EMP, if applicable; and developing preliminary audit findings, BMPs, and exceptional practices. However, unlike a standard audit, the audit team does not attempt to present potential audit findings, BMPs, or exceptional practices over the phone at the close of the audit interview.

Telephone audit activities primarily involve teleconferences with concession and park personnel. Depending upon the size and complexity of the concession's operations and personnel availability, the audit may involve only one teleconference. However, while unlikely, multiple calls may be necessary to contact all the concession and park staff necessary to obtain a clear understanding of concession activities.

When conducting teleconferences, the audit team should follow the questions developed on the AQ in order to minimize the amount of time spent on the phone.

The audit team needs to be cautious in the manner in which a telephone audit is conducted. Since the exchange will not include face-to-face contact, questions should be as clear as possible. The audit team should take care to explain the scope and context of the questions, due to the compressed time spent with the concessioner as compared with a site visit. In addition, the audit team should be mindful of the amount of paperwork requested, so as to lessen the burden on the resources of both park and concession staff.

Conduct In-Brief

Prior to collecting audit data, the ATL should conduct an abbreviated and informal In-Brief presentation via teleconference to introduce the audit team to park and concession personnel, and orient park and concession staff to the environmental audit process. Through the informal In-Brief presentation, the ATL should ensure that concession staff understand, at a minimum, which facilities, services, and operations are being audited; what the audit criteria are; and why it was decided that the concession should undergo a telephone audit rather than a standard audit.

Gather Audit Data

AQ Review: Following the informal In-Brief, the ATL should proceed through the questions on the AQ with concession staff. The AQ review is essential for the audit team, concession, and park staff to stay focused on the task of collecting data relevant to the environmental audit. To this end, the audit team should proceed through the AQ in order.

Collecting Detailed Audit Data: There are two ways in which audit data are gathered during telephone audits:

- Interviews; and
- Record, photo, and document reviews.

Since physical observations are not possible during telephone audits, only one of the two data collection methods listed above is needed to generate audit conclusions; however, at least two auditors must agree with the conclusion for it to appear in an audit report.

Interviews: Auditors should collect audit data in a manner similar to the interview process for the standard environmental audit. During the teleconference, auditors should ask concession staff in-depth questions about their operations and applicable environmental program areas, as detailed in the AQ.

Record and Document Reviews: Through the AQ review and audit data collection interviews, auditors may identify key concession records and documents that should be reviewed to understand the status of the concession's environmental operations and activities. Examples of the type of documents to be reviewed are emergency action plans, SOPs, hazardous waste manifests, and training and inspection logs.

The ATL should request copies of key documents from the park POC. Transmission of these documents, by express mail, fax, or email, should occur within one week of the request. In many cases, the collection of these key documents will occur during the pre-audit planning phase, at the time that the AQ is collected. Auditors should be conscious of the burden that collecting, copying, and submitting these documents imposes on park and concession staff. The audit team as a group must weigh the need for the documentation against this burden to determine if the need for the documentation to conduct the audit accurately and completely is justified. The need for too many documents may be an indicator that a standard environmental audit is more appropriate for the concession than a telephone audit.

The audit team may also choose to review photographs to better understand concession facilities, services, and operations. If audit team members determine that visual evidence is needed to understand or come to a conclusion about concession activities, the ATL may request that the park POC take photographs and send them to the audit team for review. Photographs may provide general information or be directed at a particular operation of interest.

Recording Audit Data: All audit data should be recorded by the audit team in a notebook, in a manner similar to that used for standard audits.

Providing Compliance Assistance while Collecting Data: While auditors are gathering information to develop audit findings, they should also educate concession and park staff on how other concessions have successfully addressed similar environmental issues, or offer other ideas on how these issues could be addressed. This should be carried out similarly to how it is done for standard audits.

Reporting Emergency Conditions

Emergency conditions and in-progress reporting should be conducted in the same general manner as for the standard environmental audit. In the unlikely event that emergency conditions are detected by audit team members during the teleconference, these should be reported immediately to the park POC, the responsible concession manager or supervisor, and the park Superintendent. Since the audit team is not on site to physically observe perceived emergency conditions, it is not recommended that the audit team inform the park Superintendent directly, unless necessary.

Conduct EMP Review

The EMP review, if applicable, should be conducted similarly to how it is carried out for the standard audit.

Develop Preliminary Audit Findings, BMPs, and Exceptional Practices

Preliminary audit findings, BMPs, and exceptional practices are developed in the same manner as for the standard environmental audit.

Conduct Exit-Brief

Unlike a standard environmental audit, the audit team is not expected to detail potential audit findings, BMPs, and exceptional practices in an Exit-Brief presentation for each concession audited. Due to the nature of the telephone audit, the Exit-Brief presentation will be a simple wrap-up discussion detailing next steps in the audit process and soliciting final questions or concerns from the concession or park POC.

Telephone Audit Post-Conference Activities

Post-audit activities occur for telephone audits in the same manner as for the standard environmental audit.

After the Environmental Audit

Corrective action and reporting on progress toward closing the telephone audit occurs in the same manner as for the standard environmental audit.

8. The Basics Regarding Obligations to Pay Local Taxes

Most current NPS concession contracts contain a clause requiring concessioners to pay “any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner.” However, this clause only applies to taxes that are “lawfully imposed” by states or local entities. Because NPS concessioners operate on federal lands and do not actually own the structures which they use in their operations, taxes which they are assessed by local entities may in fact not be lawfully imposed. If so, the concessioner may not have to pay them.

Generally speaking, a state or local entity cannot impose taxes on the federal government, federal lands or activities on federal lands unless the federal government has agreed to such a tax being imposed. A NPS concessioner’s liability for paying local taxes can depend on whether the National Park unit in which it operates was initially state land which was then given to the federal government. In those instances, the state may or may not have retained a right to levy taxes on activities or property located on that land when it transferred ownership of the land to the federal government.¹⁹ This principle also applies to a state’s right to impose liquor taxes or require property operating solely on the federal land, such as vehicles, to be licensed through the state.²⁰

Another important fact is that NPS concessioners do not own the real property improvements associated with their operations on the National Parks. Title to those improvements is held by the federal government and, under the 1998 Act, the concessioner has a leasehold surrender interest related to those improvements. For this reason, even if a local entity has the authority to issue real property taxes on federal lands, an NPS concessioner may not be liable for any such tax because the concessioner does not own the property.²¹

The federal government has enacted various statutes which allow states and local governments to tax certain types of activities on federal lands. For example, one particular federal statute, known as the Buck Act, allows state and local authorities to impose their sales or use tax on companies carrying on business in federal areas.²² Another part of that statute has been found to authorize states and local governments to levy taxes on motor fuel sold by NPS

¹⁹ *State of Wyoming v. Yellowstone Park Co.*, 121 P.2d 170 (1942); *Superior Bath House Co. v. McCarroll*, 312 U.S. 176 (1941); *Standard Oil Co. of California v. Johnson*, 76 P.2d 1184 (1938).

²⁰ *Yosemite Park & Curry Co. v. Dept. of Motor Vehicles*, 2 Cal. Rptr. 431 (Cal. 1960); *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518 (1938).

²¹ *Havasu Springs Resort Company v. La Paz County*, 18 P. 3d 143 (Ct. App. Az. 2001).

²² 4 U.S.C. § 105.

concessioners if the motor fuel is not for the exclusive use of the federal government.²³ However, the same statute did not authorize a state or local government to tax the concessioner based on its own use of motor fuel.²⁴

Also, given the unique nature of a concessioner's leasehold surrender interest, its particular property interest in the structures it uses to operate on NPS areas may not fall under any of the types of property a local authority has the right to tax.²⁵ In addition, there is a federal statute which prohibits the levying of taxes for the mere privilege of conducting certain recreational activities on navigable waterways which has resulted in a state tax that attempted to do so being held invalid.²⁶

²³ 4 U.S.C. § 104; 38 U.S. Op. Atty. Gen. 522 (1936).

²⁴ *State of Wyoming v. Yellowstone Park Co.*, 121 P.2d 170 (1942).

²⁵ Board of Assessment Appeals, *In the Matter of Dingmans Campground*, Record # 112633 (Pike County, Pa. Dec. 20, 2007); *Coso Energy Developers v. County of Inyo*, 19 Cal. Rptr. 669 (Cal. 2004).

²⁶ *High Country Adventures, Inc. v. Polk County*, No. E2007-02678-COA-R3-CV (Tenn. Ct. App. 2008).

9. The Basics Regarding Challenges to NPS Solicitations

When an individual or company objects to the terms of a prospectus or a decision by NPS related to a solicitation for a concession contract, there are several potential forums where that person can challenge NPS's action by filing a protest. Each forum has its own requirements and deadlines for submitting a protest, as well as associated upsides and downsides. The potential forums include a federal District Court, the U.S. Government Accountability Office (GAO) and the United States Court of Federal Claims. A brief discussion of each forum and their applicable rules is set out below.

A decision related to either the terms of a concession prospectus or the evaluation of proposals submitted in response to a prospectus can be filed at a federal District Court in certain situations. Federal District Courts can hear these challenges if the concession contract is deemed by the court not to be a procurement. In fact, several lawsuits related to solicitations for NPS concession contracts have been recently filed in federal District Courts and NPS as well as the courts have agreed that the concession contracts at issue are not procurements, thus giving the court the ability to hear the protest. Typically, any such protest should be brought as soon as the basis for the challenge is known. In addition, if a party has objections to the terms of the prospectus, a protest regarding those terms should be brought before the proposals are submitted to avoid the risk that the challenge could be rejected as being too late. The lawsuit can potentially be brought either in the federal District Court which has jurisdiction over the area where the concession operations occur or in the federal District Court located in Washington, D.C. If the District Court agrees with the basis for the protest, it has the ability to invalidate any decision by NPS and require it to comply with the law.

Another potential forum for a challenge to any such decision is the GAO, also located in Washington, D.C. Contrary to the positions taken by some of the District Courts, GAO has held that NPS concession contracts which involve a sufficient amount of maintenance of federal structures are in fact procurement contracts which allows GAO to hear challenges related to them. GAO has strict deadlines for submitting protests, including a requirement that a protest be brought within 10 days of when the basis for it became known. While the GAO is typically a less costly forum for pursuing a protest, NPS has recently refused to provide any internal documents related to its decisions involving concession contracts to GAO when protests are filed.²⁷ The result is that it can be very difficult to prevail on a protest where a resolution of the issues raised by the protester requires an examination of NPS's internal documents.

A third potential forum for protests is the United States Court of Federal Claims. The Court of Federal Claims also has effective deadlines as to when a protest must be filed which

²⁷ *DNC Parks & Resorts at Yosemite, Inc.*, B-410998 (April 14, 2015).

require protests to be filed in a timely manner. Unlike the District Courts whose authority to award any costs to a protester, such as the cost of preparing its proposal, is capped at \$10,000, the Court of Federal Claims can award a successful protester its costs for having prepared its proposal without no maximum cap. However, the Court of Federal Claims has also recently ruled that, when it agrees that an NPS decision related to a concession contract was incorrect, the court can only award the costs of preparing the proposal to the protester and cannot require NPS to revise its evaluation process or otherwise comply with the law.²⁸ This limitation on the potential relief available is significant and is an important difference from relief available from the federal District Courts.

Selecting the most advantageous forum for any protest requires a careful and knowledgeable assessment of the basis for the protest and the forum's prior holdings on the issues involved in the protest.

²⁸ *Eco Tour Adventures, Inc. v. United States*, 114 Fed. Cl. 6 (2013).