

DEPARTMENT OF THE INTERIOR**National Park Service****36 CFR Part 51****RIN 1024-AC72****Concession Contracts****AGENCY:** National Park Service, Interior.**ACTION:** Proposed rule.

SUMMARY: This proposed rule would amend regulations on concession contracts to comply with the requirements of Title IV of the National Parks Omnibus Management Act of 1998 (the "1998 Act"), which provides new legislative authorities, policies and requirements for the solicitation, award and administration of National Park Service concession contracts.

DATES: We will accept written comments, suggestions or objections on or before August 30, 1999.

ADDRESSES: Written comments should be sent to the Concessions Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 "C" Street, NW, Washington, DC 20240 (202/565-1219).

SUPPLEMENTARY INFORMATION: The 1998 Act has established a new statutory framework for the solicitation, award and administration of National Park Service concession contracts. Concession contracts are the form of governmental authorization used to permit private businesses ("concessioners") to provide visitor services in areas of the national park system. Visitor services include lodging, food service, merchandising, transportation, outfitting and guiding, and similar activities.

The National Park Service has been awarding and administering concession contracts in various forms since its establishment in 1916. In 1965, Congress formally established by the Concession Policies Act of 1965 (the

"1965 Act") a number of policies and procedures regarding concession contracts. 36 CFR part 51 as it presently exists implemented the 1965 law. On November 13, 1998, the Congress substantially revised these policies and procedures by passage of the 1998 Act.

General Content

The proposed rule has two major purposes. The first is to set forth procedures as to how concession contracts are to be solicited and awarded by the National Park Service under the 1998 Act. With certain limited exceptions, the 1998 Act requires competitive awards of concession contracts. In some circumstances, an existing satisfactory concessioner may have a right to match the terms of a competing proposal for a new concession contract.

Second, unlike the existing 36 CFR part 51, the proposed rule sets forth in detail the nature of the compensatory interest in capital improvements a concessioner may construct on park lands under the terms of a concession contract. This interest, called a "leasehold surrender interest," is described at length in the 1998 Act. It is our intention to establish appropriate contract terms and conditions for leasehold surrender interests by this rule so as to assure that the requirements of the 1998 Act are strictly followed. Accordingly, the leasehold surrender interest subpart of the proposed rule is lengthy. However, concession contracts will be proportionately shorter as they will refer to the regulations with respect to leasehold surrender terms and conditions.

The proposed rule also contains a number of other provisions implementing the policies and procedures of the 1998 Act.

Subpart Content**Subpart A**

Authority and Purpose. Subpart A of the rule describes the authority for the

rule, its scope, and the scope of concession contracts in general. It also describes the statutory policies that underlie concession contracts.

Subpart B

General Definitions. Subpart B provides a number of definitions of terms that are used throughout the rule. Readers should refer to these definitions whenever a defined term is used in the text of the rule.

Subpart C

Solicitation, Selection and Award procedures. Subpart C describes general procedures for competitive solicitation, selection and award of concession contracts in compliance with the 1998 Act. Except as described in subpart D, we must award all concession contracts on a competitive basis. As part of the competitive process, however, we will give great emphasis to the responsiveness of concession contract proposals to the objectives of protecting, conserving, and preserving resources of park areas, including, but not limited to, the conduct of environmentally enhancing operational programs.

Among other matters, prospectuses must set forth specific environmentally enhancing operational objectives and challenge offerors to propose means to meet or exceed these objectives. It is our intention to "green" both government and concessioner operations in park areas so as to make them a nationwide model and example. The Secretary, the National Park Service and current concessioners are already actively pursuing the "greening" program, focussing on such activities as recycling, waste minimization, environmentally preferable procurement ("green procurement"), and hazardous waste response capabilities.

The following chart summarizes the process set forth in Subpart C for evaluating proposals in compliance with the 1998 Act to select the best proposal.

SUMMARY OF PROCESS FOR EVALUATING PROPOSALS

Evaluate the proposals for:	Select the one proposal that:	If two or more are substantially equal:
1. Responsiveness to the prospectus (§ 51.14).	Is responsive to the prospectus	Continue with all responsive proposals. (Reject any that are not responsive) (§ 51.14).
2. The four principal factors (§ 51.20(a)-(d)).	Is assessed as the best overall proposal	Continue with all substantially equal proposals. (Reject any that are unacceptable under any of these factors) (§ 51.24).
3. Program for environmental enhancement (§ 51.20(a) subfactor).	Provides the "most substantial, comprehensive and effective program for environmental enhancement". Unless Another proposal provides, through higher than minimum franchise fees, substantively greater benefits for the preservation of the resource	Continue with all substantially equal proposals.

SUMMARY OF PROCESS FOR EVALUATING PROPOSALS—Continued

Evaluate the proposals for:	Select the one proposal that:	If two or more are substantially equal:
4. The fifth principal factor (§ 51.20(e)).	Then Select that other proposal is assessed as the best proposal with respect to this factor.	Continue with all substantially equal proposals.
5. Secondary factors (§ 51.22)	Is assessed as best proposal with respect to the secondary factor.	Continue with all substantially equal proposals.
6. Additional selection factors described in the prospectus (if any)(§ 51.23b).	Meets the selection factors better than any other remaining proposal.	Request "best and final" proposals from all remaining offerors. Repeat evaluation for all "best and final" proposals (§ 51.23a).

Subpart D

Non-Competitive Award of Concession Contracts. Subpart D describes the three limited situations in which we may make non-competitive awards of concession contracts. In certain circumstances we may extend a concession contract for up to three years on a non-competitive basis, we may award a temporary contract for a term of no more than three years on a non-competitive basis, and, we may award a concession contract on a non-competitive basis in extraordinary circumstances if certain findings are made and special procedures followed.

Subpart E

Right of Preference. Subpart E describes the right of preference to a new concession contract that may be obtained by certain existing satisfactory concessioners. Only satisfactory outfitter and guide concessioners or satisfactory concessioners annually grossing under \$500,000 are eligible for the preference. If a concessioner is eligible for the preference, it must submit a responsive offer pursuant to the prospectus issued for the new contract. If the concessioner does so, it is entitled under specified conditions to match the terms of a better proposal for the concession contract.

Subpart F

Leasehold Surrender Interest. Subpart F first defines a number of terms necessary to understand the leasehold surrender provisions of the rule. You should refer to these definitions whenever the defined terms are used in the text of the rule. Subpart F then sets forth the terms and conditions of leasehold surrender interests which you may obtain under a concession contract. Generally, a leasehold surrender interest constitutes a right of a concessioner to receive payment for capital improvements a concessioner makes on park area lands. As stated above, the terms and conditions of leasehold surrender interests are very detailed as we intend that these terms and conditions will be incorporated by

reference into concession contracts, making concession contracts proportionately shorter.

Subpart G

Possessory Interest. Subpart G sets forth transition procedures with respect to the form of compensatory interest ("possessory interest") obtained by concessioners under certain concession contracts entered into under the 1965 Act and concession contracts to be entered into under the 1998 Act. In general terms, a 1965 Act concessioner may either receive full compensation for existing possessory interest as described in the applicable contract or convert the possessory interest to a leasehold surrender interest if it seeks and is awarded a new concession contract.

Subpart H

Concession Contract Provisions. Subpart H describes in general the terms of certain concession contract provisions that reflect the policies and procedures of the 1998 Act.

Subpart I

Assignment or Encumbrance of Concession Contracts. Subpart I sets forth the standards and procedures applicable to our approval of assignments of concession contracts and encumbrance of concessioner assets.

Subpart J

Information and Access to Information. Subpart J describes the types of records a concessioner must retain for the purposes of our concession contract administration, the access rights of the government to the records, and the types of concessioner information that we make available to the public.

Subpart K

The Effect of the 1998 Act's Repeal of the 1965 Act. Subpart K describes the effect of the 1998 Act's repeal of the 1965 Act by the 1998 Act. In this connection, section 415 of the 1998 Act repealed the 1965 Act but states that the repeal does not affect the validity of any concession contract or permit entered

into under the 1965 Act. However, Section 415 also states that the 1998 Act will apply to existing contracts or permits to the extent that the provisions of the 1998 Act are not inconsistent with the terms and conditions of the existing concession contract or permit.

Questions have arisen in this regard as to the possible continuation of the right of preference in renewal previously provided to existing satisfactory concessioners by section 5 of the 1965 Act. It is our position, subject to consideration of public comments on this matter, that the 1998 Act repealed this right of preference in renewal as the right was statutory in nature, not contractual. However, the proposed rule also states that we will provide an existing satisfactory concessioner a right of preference as otherwise described in the proposed regulations if a particular concession contract or permit in effect as of November 13, 1998, is determined to have provided a preference in renewal as a matter of contract right. We particularly request public comment on this matter.

Subpart L

Information Collection. Subpart L sets forth information collection requirements of the rule.

Drafting Information

The primary authors of this rule are Lars A. Hanslin, Special Assistant to the Director, National Park Service, and Wendelin M. Mann, Concession Program, National Park Service.

Compliance With Laws, Executive Orders and Departmental Policy*Regulatory Planning and Review (E.O. 12866)*

This rule is a significant rule and has been reviewed by the Office of Management and Budget review under Executive Order 12866.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of the proposed rule is to establish policies and procedures for the solicitation, award and administration of National Park Service concession contracts required by the 1998 Act.

Regulatory Flexibility Act

The purpose of this rule is to describe policies and procedures for the solicitation, award and administration of National Park Service concession contracts in accordance with the 1998 Act. The Department of the Interior is analyzing what, if any, economic effects this rule will have on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As of the promulgation of this rule, there are only approximately 630 National Park Service concession contracts and permits. It is likely that upon implementation of this rule and related authorities, this number will decrease, perhaps to as few as 350, as alternative authorities for providing visitor services in areas of the National Park System are now available. Consistent with the Regulatory Flexibility Act, the Department of the Interior will publish in the **Federal Register** its initial regulatory flexibility analysis and invite public comment on this analysis.

Unfunded Mandates Reform Act

The National Park Service has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, State, tribal governments or private entities. As stated above, the rule imposes no costs on any entity except for application expenses for businesses that seek to be awarded a National Park Service concession contract. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings. (E.O. 12630)

In accordance with Executive Order 12360, the rule does not have significant takings implications. The rule has no effect on private property. A takings implications assessment is not required.

Federalism

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than the National Park Service.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule requires an information collection from ten or more parties so a submission under the Paperwork Reduction Act is required. The information collection for submission of offers in response to concession prospectuses is covered by OMB Approval No. 1024-1025, effective through December 31, 1999. An information collection for proposed sales of concession operations was previously covered by OMB Approval No 1024-0126, which expired January 31, 1996. An OMB form 83-I has been submitted to OMB for approval.

This information is solicited to assist in the administration of National Park Service concession contracts. The general public is not required to provide information by this rule. The public reporting burden relates only to persons or entities applying to become National Park Service concessioners. The National Park Service estimates that approximately 20 large and 80 small authorizations will expire each year. On average, the National Park Service receives approximately 4 offers for each large authorization and 2 for each small authorization. Estimated time to prepare a large offer is 60 working days (480 burden hours), and 30 working days (240 burden hours) for a small offer. The National Park Service estimates the average cost per hour at \$40, resulting in an annual cost of \$3,072,000. Likewise, the National Park Service receives approximately 20 requests to sell or transfer concession authorizations each year. The National Park Service estimates that approximately 80 hours are required to prepare an application, and only 1 application is submitted per transaction. Based on an average cost of \$40 per hour, the annual cost would be \$64,000. The total of these estimated annual costs is \$3,136,000.

Comments on the information collection aspect of this rule should be

directed to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments should also be directed to the Information Collection Officer, National Park Service, 1849 C Street, NW, Washington, DC 20240. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

National Environmental Policy Act

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required. The rule will not increase public use of park areas, introduce noncompatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Clarity of this Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks.

In consideration of the forgoing, 36 CFR Part 51 is proposed to be revised to read as follows:

PART 51—CONCESSION CONTRACTS

Subpart A—Authority and Purpose

Sec.

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

Subpart B—General Definitions

- 51.3 How are terms defined in this part?

Subpart C—Solicitation, Selection and Award Procedures

- 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?
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 terminate a prospectus or solicitation?
51.12 Do I have any rights if the Director amends, extends or terminates a prospectus or solicitation?
51.13 Are there any other procedures that I must follow or that apply to the solicitation or to the selection of the best proposal?
51.14 When will the Director determine if proposals are responsive?
51.15 What is a "responsive proposal"?
51.16 What happens if no responsive proposals are submitted?
51.17 May I clarify, amend or supplement my responsive proposal after it is submitted?
51.18 How will the Director select an offeror for award of the concession contract?
51.19 How will the Director select the best proposal?
51.20 What are the five principal selection factors?
51.21 How will the Director apply the five selection factors and select the best proposal?
51.22 When will the Director apply secondary factors?
51.23 How will the Director select the best proposal if two or more proposals are assessed as equal after the Director has applied the principal and secondary factors?
51.24 What happens if a proposal is rated "unacceptable" under any of the first four principal selection factors or if the offeror is not a qualified person?
51.25 Must the Director award the concession contract that is set forth in the prospectus?
51.26 Does this part limit the authority of the Director?

- 51.27 When must the selected offeror execute the concession contract?
51.28 After the selected offeror executes the concession contract, when may the Director execute the concession contract?

Subpart D—Non-Competitive Award of Concession Contracts

- 51.29 May the Director extend an existing concession contract without a public solicitation?
51.30 May the Director award a temporary concession contract without a public solicitation?
51.31 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Subpart E—Right of Preference

- 51.32 Does the existence of a preferred offeror and a possible right of preference limit the authority of the Director to establish the terms of a concession contract?
51.33 What three conditions must be met before the Director determines that a prior concessioner is a preferred offeror?
51.34 How will the Director determine that a concession contract is a qualified concession contract?
51.35 How will the Director determine that a concession contract is an "outfitter and guide concession contract"?
51.36 What are some examples of outfitter and guide concession contracts?
51.37 What facts and circumstances will the Director take into account when determining if a concession contract is an outfitter and guide concession contract?
51.38 What are some circumstances that will indicate that outfitter and guide operations are conducted in the backcountry?
51.39 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?
51.40 Are there exceptions to this compensable interest prohibition?
51.41 Who will make the determination that a concession contract is an outfitter and guide contract?
51.42 How will the Director determine if a prior concessioner was satisfactory for purposes of this part?
51.43 Will a prior concessioner that has operated for less than 50% of the term of a concession contract be considered a satisfactory operator?
51.44 May the Director determine that a prior concessioner has not operated satisfactorily after a prospectus is issued?
51.45 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?
51.46 May the Director grant a right of preference except in accordance with this part?
51.47 How will I know if a preferred offeror exists?

- 51.48 What solicitation, selection and award procedures apply when a preferred offeror exists?
51.49 What must a preferred offeror do before he or she may exercise a right of preference?
51.50 What happens if the preferred offeror does not submit a responsive proposal?
51.51 What is the process if the Director determines that the best responsive proposal was not submitted by the preferred offeror?
51.52 What if the preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal or is not a qualified person to carry out the terms of the amended proposal?
51.53 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?
51.54 What happens to a possible right of preference if the Director receives no responsive proposals?
51.55 How do I appeal a decision of the Director that a prior concessioner is not a preferred offeror?

Subpart F—Leasehold Surrender Interest

- 51.56 What special terms must I know to understand leasehold surrender interest?
51.57 How do I obtain a leasehold surrender interest?
51.58 If a concessioner does not comply with the requirements of this part or the terms and conditions of a leasehold surrender interest concession contract, what happens?
51.59 Why may the Director authorize the construction or installation of a capital improvement?
51.60 What must a concessioner do before beginning to construct or install a capital improvement in which the concessioner seeks a leasehold surrender interest?
51.61 What must a concessioner do after substantial completion of the capital improvement?
51.62 How will the Director determine the construction cost for purposes of leasehold surrender interest value?
51.63 May the concessioner appeal the Director's determination of construction cost?
51.64 What actions may or must the concessioner take with respect to a leasehold surrender interest?
51.65 Will leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?
51.66 How will a new concession contract awarded to a prior concessioner treat a leasehold surrender interest obtained under a prior concession contract?
51.67 How is a prior concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?
51.68 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?

- 51.69 What is the process to determine the leasehold surrender interest value when a new concessioner is to pay a prior concessioner for a leasehold surrender interest?
- 51.70 May the concessioner gain additional leasehold surrender interest by adding to a structure in which the concessioner has a leasehold surrender interest?
- 51.71 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?
- 51.72 Will a concessioner who undertakes a major rehabilitation of an existing structure in which the concessioner has a leasehold surrender interest increase its leasehold surrender interest?
- 51.73 Under what conditions will the Director authorize a concessioner to obtain a leasehold surrender interest in an existing capital improvement in which no leasehold surrender interest exists?
- 51.74 Will a concessioner receive new or additional leasehold surrender interest as a result of a rehabilitation that does not qualify as a major rehabilitation?
- 51.75 Is a concessioner required to maintain capital improvements, and if so, will the concessioner obtain a leasehold surrender interest in such repair and maintenance?

Subpart G—Possessory Interest

- 51.76 If a prior concessioner is not awarded a new concession contract, how will a prior concessioner that has a possessory interest receive compensation for its possessory interest?
- 51.77 If a prior concessioner is awarded a new concession contract, what happens to the concessioner's possessory interest?
- 51.78 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?
- 51.79 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?
- 51.80 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the possessory interest?

Subpart H—Concession Contract Provisions

- 51.81 What is the term or length of a concession contract?
- 51.82 When may a concession contract be terminated by the Director?
- 51.83 May the Director split or combine concession contracts?
- 51.84 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?
- 51.85 Will a concession contract provide a concessioner an exclusive right to provide visitor services?
- 51.86 Is there a special rule for transportation service contracts?

- 51.87 Where will the Director deposit franchise fees and how will the Director use franchise fees?
- 51.88 Will franchise fees be subject to renegotiation?
- 51.89 May the Director waive payment of franchise fee or other payments?
- 51.90 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?
- 51.91 May the Director include "special account" provisions in concession contracts?
- 51.92 [Reserved]

Subpart I—Assignment or Encumbrance of Concession Contracts

- 51.93 What special terms must I know to understand this Part?
- 51.94 What assignments require the approval of the Director?
- 51.95 What encumbrances require the approval of the Director?
- 51.96 Does the concessioner have an unconditional right to receive the Director's approval for an assignment or encumbrance?
- 51.97 What happens if an assignment or encumbrance is completed without the approval of the Director?
- 51.98 What happens if there is a default on an encumbrance approved by the Director?
- 51.99 How does the concessioner get the Director's approval before making an assignment or encumbrance?
- 51.100 What information will the Director require in the application?
- 51.101 May the Director waive any of these documentation requirements?
- 51.102 What are standard proformas?
- 51.103 If the concessioner submits a non-standard proforma, is the Director less likely to approve the transaction?
- 51.104 If the transaction includes more than one concession contract, how must required information be provided?

Process To Receive the Director's Approval of Assignments and Encumbrances

- 51.105 In what circumstances will the Director not approve an assignment or encumbrance?
- 51.106 What information will the Director consider when deciding to approve a transaction?
- 51.107 Does the Director's approval of an assignment or encumbrance include any representations of any nature?
- 51.108 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?
- 51.109 May the Director open to renegotiation or modify the terms of a concession contract as a condition of the approval of a transaction?
- 51.110 May the Director charge a fee for the review a proposed transaction?

Subpart J—Information and Access to Information

- 51.111 What records must the concessioner keep and what access does the Director have to records?
- 51.112 What access to concessioner records will the Comptroller General have?
- 51.113 What information will the Director make publicly available about the concessioner and the concession contract?
- 51.114 When will the Director make proposals and evaluation documents publicly available?

Subpart K—The Effect of the 1998 Act's Repeal of the 1965 Act

- 51.115 Did the 1998 Act repeal the 1965 Act?
- 51.116 What is the effect of the 1998 Act's repeal of the 1965 Act's renewal preference?
- 51.117 What renewal preference exceptions are made for Glacier Bay cruise ships?

Subpart L—Information Collection

- 51.118 Have information collection procedures been followed?

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391)

Subpart A—Authority and Purpose

§ 51.1 What does this part cover?

(a) This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary of the Interior under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, and particularly, Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391). The purpose of concession contracts is to authorize concessioners to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part.

(b) The Director may award concession contracts only under this authority. The Director may not authorize the conduct of visitor services by any means other than a concession contract except as otherwise may be authorized by law. For example, the Director may issue limited commercial use authorizations under section 418 of the 1998 Act. Or, the Director may enter into agreements with non-profit organizations for the sale of interpretive materials and/or the conduct of interpretive programs for a fee or charge to visitors. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize the non-profit organization to provide other incidental visitor services

necessary and appropriate for the conduct of the interpretive program.

§ 51.2 What is the policy underlying concessions contracts?

It is the policy of the Congress and the Secretary of the Interior 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.

Subpart B—General Definitions

§ 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 Concessions Policy 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*), unless otherwise indicated in this part, means a binding written agreement between the Director and a concessioner under which the concessioner is authorized and/or required 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. 602 *et seq.* and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply to federal service contracts or other types of federal procurement actions.

A *concessioner* is an individual, corporation, or other legally recognized form of business organization that holds a concession contract.

Director means the Director of the National Park Service or an authorized

representative of the Director, except where a particular official is specifically identified in this part.

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 form of business organization that submits a proposal for a concession contract.

A *park area* means a unit of the national park system.

Possessory interest means a compensable interest in real property improvements as defined by the 1965 Act obtained by a prior concessioner under a possessory interest concession contract. Possessory interest does not include any interest in personal property even though a prior concession contract may have provided a compensable interest in personal property described as a “possessory interest.”

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

A *preferred offeror* is a prior concessioner that the Director has determined is eligible to exercise a right of preference to the award of a concession contract in accordance with this part if the preferred offeror submits a responsive proposal under a prospectus.

A *prior concession contract* is the concession contract that is or was in effect before the effective date of a new concession contract.

A *prior concessioner* is a concessioner under a prior concession contract.

A *qualified person* is an individual, corporation or other legally recognized form of business organization that the Director determines is qualified to be a concessioner. To be a qualified person, an individual, corporation or other legally recognized form of business organization must have the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and 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 *right of preference* is the right of a preferred offeror, if it submits a responsive proposal, to match in accordance with the requirements of this part the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a concession contract. A right of preference does not provide a

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

Subpart C—Solicitation, Selection and Award Procedures

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

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 describe the terms and conditions of a concession contract to be awarded and will invite the general public to submit proposals for the 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 franchise fee or fees, and, other forms of minimum consideration, if any, that the concessioner must pay;
- (2) The minimum required visitor services that the concessioner must provide and any other visitor services that the concessioner may be authorized but not required to provide;
- (3) The minimum capital investment that the concessioner must make;
- (4) The minimum required measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area. Such minimum requirements will include specific actions and programs

for the protection and enhancement of the environment as appropriate in furtherance of these purposes; and

(5) Any other minimum requirements that the new contract may specify.

(b) The terms and conditions of a prior 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 a prior 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 prior concessioner from a new concessioner under the terms of a prior concession contract;

(e) A statement identifying each principal selection factor for proposals, including sub-factors, 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) Any additional information available to the Director that the Director determines is necessary to allow for the submission of competitive proposals; and

(g) Identification of a preferred offeror for the 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 and must not be developed to accommodate the capabilities or limitations of any potential offeror.

§ 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 that which is 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 a 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, 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 and mailing costs.

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

The Director will allow an appropriate period of time for submission of proposals that is not less than sixty days unless the Director determines that a shorter time period is appropriate in the circumstances of a particular solicitation.

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

The Director may amend a prospectus and/or extend the submission date prior to the date of submission of proposals. The Director may terminate a solicitation at any time prior to award of the concession contract.

§ 51.12 Do I have any rights if the Director amends, extends or terminates a prospectus or solicitation?

No offeror or other person will obtain compensable or other legal rights as a result of a canceled or resolicited solicitation for a concession contract.

§ 51.13 Are there any other procedures that I must follow or that apply to the solicitation or to the selection of the best proposal?

The Director may specify, in a prospectus, additional solicitation and/or selection procedures consistent with the requirements of this part in the interests 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, and, use of a lottery system to select proposals where two or more proposals are deemed to be of equal merit. The Director will include simplified solicitation and/or information requirements in a prospectus for a concession contract that the Director considers is likely to be awarded to a sole proprietorship.

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

After the due date for submission of proposals as stated in a prospectus, the Director may make a preliminary review of the proposals submitted to determine which of them, if any, are responsive to the terms of the prospectus. The Director will not further consider

proposals that the Director determines to be non-responsive.

§ 51.15 What is a “responsive proposal”?

A “responsive proposal” means a timely submitted proposal in which the offeror agrees to all of the minimum requirements of the concession contract and the prospectus and provides all mandatory information specified in the prospectus.

§ 51.16 What happens if no responsive proposals are submitted?

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

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

The Director may request from any offeror who has submitted a responsive proposal written clarification of its proposal. However, an offeror may not substantively amend or supplement a responsive proposal after the submission date unless the Director provides all offerors that submitted responsive proposals a similar opportunity to amend or supplement their proposals.

§ 51.18 How will the Director select an offeror for award of the concession contract?

The Director, subject to applicable conditions of this part, will select for award of the concession contract the offeror that the Director determines submitted the best proposal pursuant to the prospectus. The “best proposal” is the responsive proposal that the Director, through the following procedures, determines will result in the highest level of performance and benefit to the government, including, but not limited to, protection and enhancement of the resources of the park area, under the concession contract of all of the responsive proposals submitted.

§ 51.19 How will the Director select the best proposal?

The Director will apply to responsive proposals the five principal selection factors in § 51.20, taking into account any subfactors and secondary factors described in the prospectus, and select the best proposal in the manner set forth in that section.

§ 51.20 What are the five principal selection factors?

The five principal selection factors are:

(a) The responsiveness of the proposal to the objective, as described in the

prospectus, of protecting, conserving, and preserving resources of the park area. A subfactor under this principal factor shall be how the offeror proposes to conduct its concession operations in an environmentally enhancing manner through, among other programs and activities, energy conservation, waste reduction, and recycling;

(b) The responsiveness of the proposal to the objective, as described in the prospectus, of providing necessary, appropriate and quality visitor services at reasonable rates;

(c) 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;

(d) The financial capability of the offeror to carry out its proposal; and

(e) The amount of the proposed franchise fee and/or other forms of financial consideration to the Director. However, consideration of higher 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. The Director must establish the minimum franchise fee stated in the prospectus in accordance with these objectives. The Director may consider a proposed franchise fee higher than the established minimum if the Director determines that the proposed higher franchise fee is consistent with these objectives.

§ 51.21 How will the Director apply the five selection factors and select the best proposal?

(a) Except as indicated in paragraph (b) of this section, the first four principal selection factors will have equal weight and relative importance in the selection. The Director will assess proposals under these four principal selection factors as "unacceptable," "fair," "good," or "excellent" on the basis of a narrative explanation, discussing subfactors when applicable. The Director will then determine the best proposal taking into account the assessments under each of the first four selection factors and the narrative explanation as to the reasons for each assessment.

(b) If two or more proposals are assessed as substantially equal with respect to qualifying as the best proposal after the Director applies the first four principal selection factors, the Director will select as the best proposal the proposal that the Director determines credibly offers the most

substantial, comprehensive and effective program for environmental enhancement, unless the Director determines that another substantially equal proposal provides, through an offer of a higher than the minimum franchise fee, substantially greater benefits for the preservation of the resources of the park area. In this case, the Director will select as the best proposal that proposal that provides the higher franchise fee and will dedicate the higher portion of the franchise fee for expenditure only on park resource protection programs.

(c) If the Director determines that none of the otherwise substantially equal proposals credibly offers to provide a more substantial, comprehensive and effective program for environmental enhancement, the Director will evaluate the applicable proposals under the fifth principal selection factor to determine the best proposal, subject to the limitations stated in such factor.

§ 51.22 When will the Director apply secondary factors?

If the Director, even after applying the fifth principal selection factor, assesses two or more proposals as substantially equal with respect to qualifying as the best proposal, the Director will apply any secondary selection factors described in the prospectus to select the best proposal. The secondary factors may include, to the extent otherwise permissible by law, the extent to which a proposal calls for the employment of Indians (including Native Alaskans) and involvement of businesses owned by Indians, Indian tribes, or Native Alaskans in operations under the concession contract.

§ 51.23 How will the Director select the best proposal if two or more proposals are assessed as substantially equal after the Director has applied the principal and secondary factors?

(a) If, after the Director has applied the principal and any secondary selection factors, the Director still assesses two or more proposals as substantially equal with respect to qualifying as the best proposal, and if the prospectus does not identify an additional selection procedure, the Director will require the submission of "best and final" proposals from the offerors that submitted the substantially equal assessed proposals. Based on the "best and final" proposals, the Director will select for award of the concession contract the offeror that submitted the best final proposal as determined by the Director. In making this determination, the Director will take into account the principal selection factors, including

any subfactors, any secondary factors, and the purposes, policies and objectives of this part.

(b) If, after the Director has applied the principal and any secondary selection factors, the Director still assesses two or more proposals as substantially equal with respect to qualifying as the best proposal, and if the prospectus does identify an additional selection procedure, the Director will follow the specified procedure.

§ 51.24 What happens if a proposal is rated "unacceptable" under any of the first four principal selection factors or if the offeror is not a qualified person?

The Director must reject any proposal received, including a proposal from a preferred offeror and regardless of the franchise fee offered, if the Director determines the proposal to be "unacceptable" under any of the first four principal selection factors. The Director must reject any proposal received, including a proposal from a preferred offeror and regardless of the franchise fee offered, if the Director determines that the offeror is not a qualified person as defined in this part.

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

(a) 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, unless the Director determines that:

(1) The modification is necessary for the protection of visitors or the resources and values of the park area; and

(2) The modification does not provide a financial benefit to the selected offeror.

(b) If the Director wishes to make material modifications that are of financial benefit to the offeror, the Director must cancel and resolicit the concession contract under this part with the modified terms and conditions.

§ 51.26 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 terminate a solicitation, or to terminate a concession contract in accordance with its terms.

§ 51.27 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 period 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.

§ 51.28 After the selected offeror executes the concession contract, when may the Director execute 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, including, but not limited to, such contracts awarded non-competitively by the Director pursuant to subpart D of this part, the Director must submit the concession contract to the Committee on 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 sixty days after such 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.

Subpart D—Non-Competitive Award of Concession Contracts**§ 51.29 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 of an existing concession contract to the existing concessioner for additional terms not to exceed three years in the aggregate. The Director may award such an extension only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before awarding such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services.

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

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively a temporary concession contract for terms not to exceed three years in the aggregate to any qualified person if the Director determines that

this award is necessary to avoid interruption of visitor services. Before awarding a temporary contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. The holder of a temporary concession contract will not obtain the rights of a preferred offeror as described in this part or otherwise obtain a possible right of preference to a concession contract which replaces a temporary contract unless the Director determines both that relevant circumstances legally require the recognition of a preferred offeror under the terms of the 1998 Act, and, that the holder of the temporary contract otherwise meets the preferred offeror requirements of this part.

§ 51.31 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. The Director must publish a notice of his intention to award a concession contract under these circumstances and the reasons for the proposed award in the **Federal Register** at least 30 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 30 days before the contract is awarded. The Director must personally approve of any such notifications or award.

Subpart E—Right of Preference**§ 51.32 Does the existence of a preferred offeror and a possible right of preference limit the authority of the Director to establish the terms of a concession contract?**

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

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

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

(a) The applicable new concession contract provides only for the continuation of the visitor services authorized or required under a prior concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but may not materially differ in nature and type from those authorized or required under the prior concession contract;

(b) The applicable prior concession contract is a qualified concession contract, determined under this subpart; and

(c) The applicable prior concessioner was a satisfactory concessioner during the term of its prior concession contract, determined under this subpart.

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

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

(a) The new concession contract that is to replace the prior concession contract is estimated to result in, as determined by the Director, gross annual receipts of less than \$500,000 in the first calendar year of its term; or

(b) The prior concession contract was an outfitter and guide concession contract and the new concession contract that is to replace the prior contract is an outfitter and guide concession contract.

§ 51.35 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 both 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.

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

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

§ 51.37 What facts and circumstances will the Director take into account when determining if a concession contract is an outfitter and guide concession contract?

In determining whether a concession contract is an outfitter and guide contract, the Director will take into account the terms and related facts and circumstances of the concession contract and the actual operations conducted by the prior concessioner under a prior contract. The Director will also take into account the physical and geographic features of the applicable park area. If a prior concessioner provided visitor services beyond the scope of the outfitter and guide services authorized or required by its prior concession contract, the Director will determine that the concessioner's prior concession contract is not an outfitter and guide concession contract. The only exception to this determination is if the Director concludes that the additional visitor services were negligible in nature.

§ 51.38 What are some circumstances that will indicate that outfitter and guide operations are conducted in the backcountry?

Circumstances which indicate that outfitter and guide operations are conducted in the backcountry of a park area typically include, but are not limited to, 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 which are inaccessible by motorized vehicle;
- (d) The operations occur in areas where search and rescue support is not readily available; or
- (e) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

§ 51.39 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 not find that a concession contract is 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.

§ 51.40 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.

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

Only the Director personally, or a Deputy or Associate Director authorized by the Director, will make the determination that a concession contract is or is not an outfitter and guide contract as described in this section.

§ 51.42 How will the Director determine if a prior concessioner was satisfactory for purposes of this part?

(a) To be a satisfactory concessioner for the purposes of this part, the Director must determine that a prior concessioner operated satisfactorily on an overall basis during the term of a prior concession contract, including extensions of the contract. The Director will base this determination on annual evaluations made by the Director during the term of the applicable prior concession contract and other relevant facts and circumstances.

(b) Among other considerations, the Director will determine that a concessioner did not operate satisfactorily during the term of the prior contract if an annual evaluation of a prior concessioner was less than satisfactory for any year of operation under a prior contract, and, any additional annual evaluation was also less than satisfactory. In addition, the Director will determine that a concessioner did not operate satisfactorily during the term of the prior contract if the prior concessioner's annual evaluation in either of the last two years of the term of the prior contract was less than satisfactory.

§ 51.43 Will a prior 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 prior concessioner has not operated satisfactorily on an overall basis during the term of a prior contract if that concessioner has or will have operated under a prior concession contract for less than two years under a concession contract with a term of ten years or less than four years under a concession contract with a term of more than ten years. For purposes of this section, a new concessioner's first day of operation under an assigned concession contract will be the day the Director approves the assignment pursuant to this part. If the Director determines that the assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to this requirement.

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

If circumstances warrant, the Director may determine that a prior concessioner has not operated satisfactorily on an overall basis during the term of a prior contract after a prospectus for a new contract has been issued. In this event, the prospectus must be amended or canceled and reissued without recognition of a preferred offeror or a possible right of preference to the concession contract.

§ 51.45 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 unsatisfactory performance or otherwise. If a concession contract is terminated for unsatisfactory performance or other breach, Director will not determine the terminated concessioner, even if otherwise qualified, to be a preferred offeror. The fact that the Director may not have terminated a prior concession contract for unsatisfactory performance or other breach will not limit the authority of the Director to determine that a prior concessioner did not operate satisfactorily during the term of a prior concession contract.

§ 51.46 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. The right of preference described by this part is a statutory right. The Director will not include in concession contracts as a matter of contract right a preference or other form of entitlement of any nature to a new concession contract.

§ 51.47 How will I know if a preferred offeror exists?

If the Director has determined that a preferred offeror exists under the requirements of this subpart, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's possible right of preference.

§ 51.48 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 proposals for concession contracts for which a preferred offeror exists, except as modified by this subpart.

§ 51.49 What must a preferred offeror do before he or she may exercise a right of preference?

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

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

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

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

If the Director determines that a proposal other than the proposal of a preferred offeror is the best proposal submitted, and if a preferred offeror submitted a responsive proposal, then the Director must permit the preferred offeror to amend its proposal. The amended proposal must meet 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 is at least equal to the best proposal, and the Director determines that the preferred offeror is a qualified person as

defined in this part with respect to carrying out the terms and conditions of its amended proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions.

§ 51.52 What if the preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal or is not a qualified person to carry out the terms of the amended 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 award the contract to the offeror submitting the best proposal. Additionally, if the Director finds that the preferred offeror is not a qualified person with respect to carrying out the terms and conditions of its amended proposal, the Director will award the contract to the offeror submitting the best proposal.

§ 51.53 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 proposal, or will resolicit the concession contract without recognition of a preferred offeror or a possible right of preference.

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

If the Director receives no responsive proposals to a prospectus for a concession contract for which a preferred offeror exists, the Director may resolicit the concession contract. No preferred offeror will be recognized and no possible right of preference will apply to the resolicited concession contract unless the contract is resolicited upon terms and conditions that are materially more favorable to offerors than those contained in the original contract.

§ 51.55 How do I appeal a decision of the Director that a prior concessioner is not a preferred offeror?

(a) If the Director determines that a prior concessioner is not a preferred offeror, the prior concessioner may appeal this determination to the Director. This appeal must be received by the Director in writing no later than thirty days after the date of the determination. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. A prior concessioner that

made an appeal must submit a responsive proposal in response to a prospectus if its appeal is pending as of the date of submission for proposals as set forth in the prospectus. If the prior concessioner fails to submit a timely responsive proposal, the Director must consider the appeal moot as no right of preference would apply to the concession contract under this part.

(b) The Director must consider this appeal personally or must authorize a Deputy or Associate Director to consider the appeal. However, the deciding official considering the appeal may not be the official who made the disputed determination. 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 before the Director selects the best proposal submitted under the prospectus. If the appeal results in a prior concessioner being determined as a preferred offeror, then the prior concessioner will have a possible right of preference to the contract as described in and subject to the conditions of this part including, but not limited to, the obligation to submit a responsive proposal.

(c) A prior concessioner will not have exhausted its administrative remedies with respect to the failure of the Director to determine it to be a preferred offeror until such time as the Director issues a written decision in response to an appeal submitted pursuant to this section.

Subpart F—Leasehold Surrender Interest

§ 51.56 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:

A *capital improvement* is a structure, fixture, or non-removable equipment provided by a concessioner under the terms of a concession contract that is permanently affixed to the land so as to be part of the realty. Except as otherwise may be specified in this part, a capital improvement does not include any interest in land. Additionally, except as otherwise may be specified in this part, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, trailers, or other objects not permanently affixed to the real estate regardless of the size of such objects. 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 eligible direct and indirect costs necessary for constructing or installing the capital improvement as determined by the Director, other than ineligible costs, that are included in the concessioner's basis in the capital improvement for federal income tax purposes.

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 from physical deterioration and/or functional obsolescence 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 costs (in amounts no higher than those prevailing in the locality of the project), of the construction contractor that both are necessary for the construction or installation of the capital improvement as determined by the Director and are typically elements of a construction contract or fixture installation contract. Eligible direct costs may include, but are not limited to, the costs of material, labor, contractor's (and subcontractors') profit and overhead, and the construction contractor's job supervision. Eligible direct costs also may include performance bonds and insurance for worker's compensation, fire, liability, and unemployment. Additionally, eligible direct costs may include the costs of building permits, equipment used in construction, security during construction, contractor's shack and temporary fencing, material storage facilities, installing power lines and utilities.

Eligible indirect costs means the sum of all other costs (in amounts no higher than those prevailing in locality of the project) necessary for the construction or installation of a capital improvement as determined by the Director. Eligible indirect costs may include, but are not limited to, design services (schematic design, design development, construction documents and cost estimating) and environmental and

other studies if required by the Director. Eligible indirect costs may also include the cost of carrying the investment in the capital improvement until its substantial completion (as determined by the Director); the cost of insuring the capital improvement until the date of its substantial completion (as determined by the Director); and direct, on-site construction inspection expenses incurred by the concessioner.

Fixtures and non-removable equipment means manufactured items of personal property of independent form and utility necessary for the basic functioning of a capital improvement that are permanently installed in or on land or a capital improvement so as to become part of the real estate (e.g., heating, air conditioning and ventilation equipment, tubs, street lamps, fire protection systems, etc.). Fixtures and non-removable equipment do not include equipment that can be disconnected and relocated without substantial damage to a structure (e.g. computer printers, portable heating units, table lamps, chandeliers, televisions, trade fixtures, trade telephones, vacuum cleaners, etc.). 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, foundations, electric wiring, water and gas piping, wallpaper, paint, etc.). Except as otherwise indicated, the term "fixture" as used elsewhere in this part includes the term "non-removable equipment."

Ineligible costs are direct and indirect costs that may be associated with the construction or installation of a capital improvement but are not approved by the Director. Ineligible costs also include all administrative, overhead and other costs of the concessioner (other than direct, on-site construction inspection expenses). Ineligible costs further include any otherwise eligible costs that are not included in the concessioner's basis in the capital improvements for federal income tax purposes.

Leasehold surrender interest solely means a right to payment in accordance with this part for related capital improvements that a concessioner makes within a park area on lands owned by the United States if the related capital improvements are made both 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 occupy or 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 accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract, leasehold surrender interest value generally is an amount equal to:

- (1) The approved 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 completion of the construction or installation 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.

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

- (1) The Director determines is completed within eighteen 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 the pre-rehabilitation value of the structure. Major rehabilitation does not include expenses resulting from routine maintenance and repair.

Pre-rehabilitation value of a 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 or seeks to obtain 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, excluding fixtures, permanently 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 and plantings are not a structure or part of a structure. Interior furnishings not attached to the structure so as to be part of the real estate are not part of the structure.

§ 51.57 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 may obtain a leasehold surrender interest in capital improvements only if the concessioner complies both with the requirements of this part and the terms and conditions of an applicable leasehold surrender interest concession contract.

§ 51.58 If a concessioner does not comply with the requirements of this part or the terms and conditions of a leasehold surrender interest concession contract, what happens?

If a concessioner does not comply with the leasehold surrender interest requirements of this part or the applicable terms and conditions of a leasehold surrender interest concession contract, the concessioner will not obtain a leasehold surrender interest or any compensable interest in capital improvements. Any capital improvements so constructed or installed by the concessioner will be the property of the United States without a right of compensation in any person.

§ 51.59 Why may the Director authorize the construction or installation of a capital improvement?

The Director may only authorize or require a concessioner to construct capital improvements on park lands for the conduct by the concessioner of necessary and appropriate visitor services as determined by the Director, including, the construction of capital improvements necessary for support of the concessioner's visitor services.

§ 51.60 What must a concessioner do before beginning to construct or install a capital improvement in which the concessioner seeks a leasehold surrender interest?

Before beginning to construct or to install any capital improvement in which the concessioner seeks to obtain a leasehold surrender interest, 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. Among other matters, the Director must not approve the construction or installation of a capital improvement to the extent that the Director considers that the estimate of total construction cost is unreasonable or if the Director finds that the estimate of total construction cost contains ineligible costs. The requirements of this section also apply to any change orders to a capital improvement project previously approved by the Director and to any proposed addition to the capital improvement made after completion of its initial construction.

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

Upon substantial completion of the construction or installation of a capital improvement, or an addition to an existing capital improvement, in which the concessioner seeks a leasehold surrender interest, the concessioner must provide the Director a detailed financial report. The detailed financial 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 financial report must document and any requested certification must state:

- (a) That all the elements of the construction cost were incurred by the concessioner;
- (b) That all such elements are eligible under the definition of construction cost as defined in § 51.56; and
- (c) That all such elements are included in the concessioner's basis in

the capital improvement for purposes of its federal income tax returns.

§ 51.62 How will the Director determine the construction cost for purposes of leasehold surrender interest value?

After receiving the detailed financial report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate. The Director will then determine in writing the construction cost that is to be recognized as the construction cost of the capital improvement for purposes of leasehold surrender interest value, and where applicable, identify any ineligible costs. If the Director's determination differs from the concessioner's report, the Director will state the reasons for the differences.

§ 51.63 May the concessioner appeal the Director's determination of construction cost?

If the concessioner disagrees with the Director's determination of construction cost, the concessioner may appeal the determination to an official designated by the Director. The appeal must be in writing and made within thirty days of receipt of the initial determination. The designated official will review the concessioner's written appeal and the record of the matter and make a final determination as to the proper construction cost in accordance with this part. Such determination will be the final administrative determination of the construction cost of capital improvements for purposes of this part or otherwise. If no timely appeal is made, the Director's initial determination will be the final determination of the construction cost of a capital improvement. The Director may at any time review a construction cost determination if the Director has reason to believe that it was based on false, misleading or incomplete information.

§ 51.64 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 or relinquish in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and
- (c) May waive, relinquish or agree to an alternative value for a leasehold surrender interest.

§ 51.65 Will 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 as described in this part or in an applicable leasehold surrender interest concession contract. Payment of leasehold surrender interest value pursuant to this part or the terms of an applicable leasehold surrender interest concession contract will constitute the payment of just compensation for a leasehold surrender interest within the meaning of this part and for all other purposes.

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

When a prior concessioner under a leasehold surrender interest concession contract seeks and 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 the new concession contract.

§ 51.67 How is a prior concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

When a prior concessioner does not seek or is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, the prior concessioner will be entitled to be paid its leasehold surrender interest value as defined in this part or in an applicable concession contract. The prior concessioner will not be required to transfer or otherwise relinquish its leasehold surrender interest until such time as the prior concessioner is paid the leasehold surrender interest value. The date for payment of the leasehold surrender interest value will be no later than twelve months after the date of expiration or termination of the

leasehold surrender contract if the payment is to be made by a new concessioner and no later than twenty-four months after the date of expiration or termination if the payment is to be made by the Director. In such circumstances, the depreciation of the related capital improvements will be established as of the date of the expiration or termination of the concession contract for leasehold surrender interest value purposes. However, the Consumer Price Index adjustment to the leasehold surrender interest will continue until the date of payment of the leasehold surrender interest value.

§ 51.68 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 concessioner that pays a prior concessioner for a leasehold surrender interest will have a leasehold surrender interest in the related capital improvements on a unit by unit basis under the terms of a 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.

§ 51.69 What is the process to determine the leasehold surrender interest value when a new concessioner is to pay a prior concessioner for a leasehold surrender interest?

Leasehold surrender interest concession contracts must contain provisions that describe the process by which a prior concessioner and a new concessioner resolve a dispute over the prior concessioner's leasehold surrender interest value and/or provisions that describe a process by which the prior concessioner and the Director determine the prior concessioner's leasehold surrender interest value. For purposes of this part, the Director's prior determinations of construction cost in accordance with this part are final and not subject to arbitration. The deduction for depreciation of the related capital improvements will be subject to arbitration. The arbitration process will be similar to the appraiser panel procedure described in this part for resolving a dispute between the Director and a concessioner as to the valuation of possessory interest. Except for values established as a result of an appraiser panel process, a new concessioner must not agree with a prior concessioner as to the prior concessioner's leasehold

surrender interest value in the aggregate or on a unit by unit basis without the prior written approval of the Director. The Director's approval ensures that the leasehold surrender interest value is consistent with the terms and conditions of the prior concession contract. A new concessioner must permit the Director to assist it in the resolution of a dispute over a prior concessioner's leasehold surrender interest value to the extent requested by the Director.

§ 51.70 May the concessioner gain additional leasehold surrender interest by adding to a structure in which the concessioner has a leasehold surrender interest?

A concessioner that adds, with the approval of the Director, a new structure (e.g., a new wing to an existing building or an extension of an existing road or sidewalk, etc.) 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 completion of the new structure, by the construction cost of the new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost of the addition as of the completion of the addition as determined by the Director. Approvals for additions to structures are subject to the same requirements and conditions applicable to new construction as described in this part. If the advance approval required by this section is not obtained by the concessioner, no increase in a concessioner's leasehold surrender interest will be recognized.

§ 51.71 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 like kind fixture will not increase its leasehold surrender interest as a result of the replacement. If the replacement fixture is not of like kind but is a substantial upgrade of the replaced fixture with respect to utility and function, and, if the construction cost of this replacement fixture exceeds the initial construction cost of the fixture to be replaced, all as determined by the Director, an increase to the concessioner's leasehold surrender interest will result. This increase will be the amount of the difference between the initial construction cost of the replaced fixture as determined by the Director and the construction cost of the

upgraded replacement fixture as determined by the Director. Approvals for replacement of fixtures are subject to the same requirements and conditions applicable to new construction or installation of a fixture as described in this part. In addition, where applicable, a concessioner must document to the satisfaction of the Director that a replacement fixture is upgraded within the meaning of this section and the initial construction cost of the fixture to be replaced and the construction cost of the upgraded fixture. If the advance approval for a fixture replacement required by this section is not obtained by the concessioner, no increase in a concessioner's leasehold surrender interest will be recognized.

§ 51.72 Will a concessioner who undertakes a major rehabilitation of an existing structure in which the concessioner has a leasehold surrender interest increase its leasehold surrender interest?

A concessioner who undertakes with the prior written approval of the Director a major rehabilitation of an existing structure in which the concessioner has a leasehold surrender interest will obtain additional leasehold surrender interest in the structure. This additional leasehold surrender interest will be established by adding the construction cost of the major rehabilitation as determined by the Director to the initial construction cost of the related structure, effective as of the date of completion of the major rehabilitation. Approval for a proposed major rehabilitation is subject to the same requirements and conditions as for new construction or installation of capital improvements as described in this part.

§ 51.73 Under what conditions will the Director authorize a concessioner to obtain a leasehold surrender interest in an existing capital improvement in which no leasehold surrender interest exists?

The Director may not authorize a concessioner to obtain a leasehold surrender interest in existing fixtures in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government building assigned by the Director to the concessioner). The Director may not authorize a concessioner to obtain a leasehold surrender interest in an existing structure in which there is no leasehold surrender interest, unless the concessioner undertakes a major rehabilitation of the structure approved in advance by the Director. If such an approved major rehabilitation is completed, the concessioner will have a leasehold surrender interest in the

related structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation as determined by the Director. Depreciation for purposes of leasehold surrender interest value will apply to the entirety of the related structure.

§ 51.74 Will a concessioner receive new or additional leasehold surrender interest as a result of a rehabilitation that does not qualify as a major rehabilitation?

Rehabilitation projects that do not qualify as major rehabilitations are considered as repair and maintenance of existing structures for which no new or additional leasehold surrender interest may be obtained.

§ 51.75 Is a concessioner required to maintain capital improvements, and if so, will the concessioner obtain a leasehold surrender interest in such repair and maintenance?

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 land, real property improvements, including capital improvements, and government personal property assigned to the concessioner by a concession contract. A concessioner will not obtain initial or additional leasehold surrender interest as a result of repair and maintenance. Concession contracts may contain provisions that require specified minimum levels of expenditures for repair and maintenance of personal property and real property improvements utilized by a concessioner. Concession contracts may also contain provisions that require establishment of repair and maintenance reserves by a concessioner dedicated to the repair and maintenance of personal property and real property improvements.

Subpart G—Possessory Interest

§ 51.76 If a prior concessioner is not awarded a new concession contract, how will a prior concessioner that has a possessory interest receive compensation for its possessory interest?

A prior 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 termination or expiration of its possessory interest concession contract, be entitled to receive compensation for its possessory interest

in the amount and manner as described by the possessory interest contract and be entitled to receive all other compensation that the possessory interest contract may provide.

§ 51.77 If a prior concessioner is awarded a new concession contract, what happens to the concessioner's possessory interest?

In the event a prior concessioner seeks and is awarded a new concession contract replacing a possessory interest concession contract, the prior concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. This prior 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 as determined by the Director on a unit by unit basis. This leasehold surrender interest will apply to the concessioner's possessory interest real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that a prior concessioner had a possessory interest in only a portion of a related structure, depreciation of the related structure for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

§ 51.78 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 prior concessioner and the Director, in the event that a prior concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the prior concessioner and the Director as to the value of such possessory interest in the aggregate or on a unit by unit basis, a panel of three licensed appraisers will establish the value or values. One of the appraisers will be selected by the concessioner, one of the appraisers will be selected by the Director, and the third appraiser will be selected by the initial two appraisers. The expenses of the third appraiser and other associated common costs of the proceeding will be borne equally by the concessioner and the Director. The panel may request presentations by the concessioner and the Director as to their positions on possessory interest value. The panel must conduct these

presentations informally without adjudicative procedures. The determination of values made by the panel will be binding on the concessioner and the Director. Judicial review of the panel's decision may be pursued by the concessioner or the Director only in the event of allegations of fraud, misconduct or misrepresentation.

§ 51.79 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, then 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 an amount equal to the lower of the value of the possessory interest as of the termination or expiration of the possessory interest concession contract or the amount of money the new concessioner in fact paid the prior concessioner for its possessory interest in real property improvements. The Director will allocate this initial leasehold surrender interest value on a unit by unit basis for purposes of the new 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 the a new concessioner obtains a leasehold surrender interest in only a portion of a related structure as a result of the acquisition of a possessory interest from a prior concessioner depreciation of the related structure for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

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

In the event of a dispute between a new concessioner and a prior concessioner as to the value of a prior concessioner's possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner shall not agree in the aggregate or on a unit by unit basis on the value or values of a prior concessioner's possessory interest without the prior written approval of the Director unless the value or values

was determined through a binding value determination process required by the possessory interest contract. The Director's written approval is to ensure that the value or values are consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a 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 resolving the dispute to the extent requested by the Director.

Subpart H—Concession Contract Provisions

§ 51.81 What is the term or length of a concession contract?

The term of a concession contract must 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. Concession contracts will generally be for a term of ten years or less. In no event will a concession contract have a term of more than twenty years. Except for the non-competitive extensions authorized by this part, the Director may not extend concession contracts.

§ 51.82 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 termination of a concession contract by the Director for default, including, but not limited to unsatisfactory performance, or when necessary to achieve the purposes of this part. The purposes of this part include, but are not limited to, the purposes of protecting, conserving, and preserving park area resources and providing necessary and appropriate visitor services in a park area.

§ 51.83 May the Director split or combine concession contracts?

The Director must not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if such action would result in a concession contract with anticipated annual gross receipts of less than \$500,000. The Director must not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if such action would result in the establishment of an outfitter and guide concession contract. The Director may combine the visitor

services authorized or required by two or more existing concession contracts into a single concession contract and may modify the type, nature and scope of the visitor services provided under a concession contract.

§ 51.84 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 must not include in a concession contract, amend a concession contract to include, 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 concessioner, including, but not limited to, a preferred offeror, 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 adjusted by the Director from time to time in furtherance of the purposes of this part.

§ 51.85 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 certain or all 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.

§ 51.86 Is there a special rule for transportation service contracts?

Notwithstanding any other provision of law, a service contract (not a concession contract) entered into by the Director solely for the provision of park area transportation services will have a term of no more than 10 years. The term of the service contract must include a base term of 5 years and may allow for annual extensions for an additional five-year period if approved by the Director.

§ 51.87 Where will the Director deposit franchise fees and how will the Director use franchise fees?

All franchise fees and other monetary consideration (excluding reimbursements made by a concessioner for services rendered by the Director to the concessioner on a reimbursable basis) required to be paid to the Director pursuant to a concession contract, including, but not limited to, 1965 Act concession contracts, will be deposited in a special account in the Treasury of the United States. Twenty percent of the funds so deposited will be available for use by the Director, without further appropriation, to support authorized activities throughout all park areas. Eighty percent of the funds will be available for expenditure by the Director without further appropriation for use at the park area where the funds were generated to support visitor services, visitor support activities conducted by the Director, and high priority and urgently needed resource management programs and operations.

§ 51.88 Will franchise fees be subject to renegotiation?

Only concession contracts with a term of more than five years will contain a provision that provides for the adjustment of the contract's established franchise fee. This adjustment will only occur if the Director determines that extraordinary, unanticipated changes occurred after the effective date of the contract which have or will significantly effect the probable value of the privileges granted by the contract. The concession contract will provide for binding arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee.

§ 51.89 May the Director waive payment of 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.

§ 51.90 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 these concession contracts that are comparable, but not necessarily the same. In establishing these 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.

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

The Director shall 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 capital improvements on park lands. The construction of all such capital improvements by the concessioner shall be undertaken pursuant to the leasehold surrender interest provisions of this part. Concession contracts may contain provisions which require the concessioner to set aside a percentage of gross receipts in a maintenance reserve to be used for the purpose of maintenance and repair of capital improvements in which the concessioner has a leasehold surrender interest. No additional leasehold surrender interest value shall be obtained as a result of the expenditure of funds from a maintenance reserve. Whether or not a concession contract contains maintenance reserve provisions, all concession contracts shall contain provisions which require the concessioner to maintain and repair all capital improvements in the park area in a manner satisfactory to the Director, including, but not limited to, capital improvements in which the concessioner has a leasehold surrender interest, utilized by the concessioner in the conduct of its operations in a manner satisfactory to the Director.

§ 51.92 Handcrafts. [Reserved]

Subpart I—Assignment or Encumbrance of Concession Contracts

§ 51.93 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 either 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 that permits 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 of record under a concession contract employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). The payments to the third party, whether a percentage of revenues or otherwise, is not relevant. This does not apply to arrangements with an individual employee.

Subconcessioner means a third party that has been granted by a concessioner, with the approval of the Director, rights to operate and/or manage the performance of a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise. Concession contracts may prohibit subconcessioners or limit the circumstances in which rights to operate and/or manage may be granted by a concessioner.

§ 51.94 What assignments require the approval of the Director?

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (these transactions are 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 and/or manage the performance of a concession contract;
- (c) Any revenues generated by a concession contract;
- (d) Any controlling interest in a concessioner;
- (e) Any controlling interest in a concession contract; or
- (f) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§ 51.95 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 and/or manage performance under a concession contract;
- (c) Any revenues generated by a concession contract;
- (d) Any controlling interest in a concessioner;
- (e) Any controlling interest in a concession contract;
- (f) Any tangible personal property used in the performance of the concession contract within the park area; or
- (g) Any leasehold surrender interest or possessory interest provided by a concession contract.

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

Approval of an assignment or encumbrance by the Director is not a matter of right to a concessioner. In addition to the required determinations described in this part, the following limitations apply to approvals of assignments and encumbrances:

- (a) The Director may only approve an encumbrance if the sole purpose of the 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 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) The Director may not approve an encumbrance that purports 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) The Director may not approve an encumbrance that purports to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract before the Director determines whether the proposed operator is a qualified person as defined in this part; and

- (d) The Director will not approve an assignment or encumbrance if the transaction purports to assign or encumber assets that are not owned by the concessioner or park area entrance, user day, or similar use allocations made by the Director.

§ 51.97 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, concession contract, rights to operate or manage under a concession contract as a subconcessioner or otherwise, revenues generated by a concession contract, or leasehold surrender interest or possessory interest, if acquired in violation of these requirements.

§ 51.98 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.

§ 51.99 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 possibly be a controlling interest in a concessioner or a concession contract, the concessioner must request in writing approval of the

transaction by the Director. The Director will provide an application form for this purpose.

§ 51.100 What information will the Director require in the application?

The application for the Director's approval of an assignment or encumbrance will require that the following information be provided in such detail as the Director may specify:

- (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, and, where applicable, the transferee's plans for conducting the operation;
- (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 descriptive statement as to whether and in what manner the proposed transaction constitutes the assignment or encumbrance of a controlling interest as described in this subpart;
- (g) A detailed description of all financial aspects of the proposed transaction;
- (h) Prospective financial statements (proformas) that have been examined by an independent accounting firm;
- (i) 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. This includes capital improvements on a unit by unit basis, tangible personal property individually or aggregated into groups of like items, and intangible assets individually itemized. In addition the applicant must provide a description of the basis for all allocations and ownership of all assets;
- (j) A statement from the transferee that if the assigning concessioner does not submit to the Director its final financial statement within sixty days after the closing date of the assignment, the transferee will do so within one hundred and twenty days after the closing date of the assignment;
- (k) A statement and narrative explanation as to why the proposed assignment or encumbrance is not prohibited under the limitations contained in this part; and
- (l) Such other information as the Director may require.

§ 51.101 May the Director waive any of these documentation requirements?

The Director may waive portions of these documentation requirements in circumstances where particular documents are considered unnecessary.

§ 51.102 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. If projections that are not consistent with the concessioner's past history are used, the proforma must be 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. If the proforma assumes that a loan related to an assignment or encumbrance will not be paid in full by the expiration of the concession contract, a narrative description as to why the loan extends beyond the term of the contract must be provided. The description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract;

(c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract. If a proforma that assumes otherwise is submitted, a narrative description as to why such extended amortization period is consistent with a reasonable opportunity for profit over the remaining term of the concession contract must be provided; and

(d) Shows, for the remaining term of the concession contract, Internal Rates of Return (IRR), and, where applicable, Returns on Gross, Returns on Equity, and Returns on Assets, consistent with common industry median expectations as reflected, where applicable, in guidelines developed by the Director. If a proforma not showing such returns is submitted, it must be accompanied by a narrative description that describes in detail how the returns shown are consistent with a reasonable opportunity for profit over the remaining term of the concession contract.

§ 51.103 If the concessioner submits a non-standard proforma, is the Director more likely to disapprove the transaction?

The submission of a non-standard proforma or proformas is more likely to

result in disapproval of a transaction by the Director as demonstrating that the transaction is inconsistent with the criteria for approval of assignments and encumbrances as described in this part.

§ 51.104 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.

Process To Receive the Director's Approval of Assignments and Encumbrances**§ 51.105 In what circumstances will the Director not approve an assignment or encumbrance?**

The Director will not approve an assignment or encumbrance described in this part if the Director determines that it is prohibited by any of the limitations set forth in this part. The Director also will not approve an assignment or encumbrance described in this part if the Director determines that:

(a) The transaction would result in the acquisition (directly, or indirectly in the event of foreclosure under an encumbrance) by a person the Director determines is not a qualified person or otherwise may not be able to satisfactorily perform the terms and conditions of the applicable concession contract;

(b) The transaction would have an adverse impact on the protection, conservation or preservation of park resources;

(c) The transaction would have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; or

(d) The terms of the transaction are likely, directly or indirectly, to reduce an existing or a new concessioner's opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to adversely affect the quality of facilities and services pursuant to the contract, or to result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

§ 51.106 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 and all other information submitted by

the concessioner as required by this part.

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

In approving an assignment or encumbrance, the Director has no duty to inform a transferee of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract. 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 or potential profitability of any concession contract or assets of a concessioner.

§ 51.108 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.

§ 51.109 May the Director open to renegotiation or modify the terms of a concession contract as a condition of 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 of 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.

§ 51.110 May the Director charge a fee for the review a proposed transaction?

The Director may charge a reasonable fee for the review of a proposed assignment or encumbrance. The fee may not exceed the actual cost to the Director of reviewing the proposed transaction.

Subpart J—Information and Access to Information**§ 51.111 What records must the concessioner keep and what access does the Director have to records?**

A concessioner (and any subconcessioners) must keep any

records that the Director may require for the term of the concession contract and for five 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 and any parent or affiliate of the concessioner.

§ 51.112 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 and subconcessioner (and parents and affiliates).

§ 51.113 What information will the Director make publicly available about the concessioner and the concession contract?

The Director will make publicly available the following information contained in annual financial statements submitted to the Director by the concessioner: Gross receipts broken out by department; net income or loss before taxes; franchise fees and building use fees; merchandise inventories; and depreciable fixed assets and net depreciable fixed assets, broken out by leasehold surrender interest or possessory interest, as applicable, and personal property. The Director will also make publicly available other information provided by a concessioner to the Director to the extent permitted by law. Notwithstanding this section, the Director will not make publicly available any information relating to a particular concession contract in effect as of [the effective date of the final rule] if the Director determines that such exercise would constitute a material breach of the concession contract.

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

The Director will not make publicly available proposals submitted in response to a prospectus, information contained in such proposals and documents generated by the Director evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director will make such information and documents available to the extent required by law.

Subpart K—The Effect of the 1998 Act's Repeal of the 1965 Act

§ 51.115 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 the 1998 Act, however, apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with the terms and conditions of a 1965 Act concession contract.

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

(a) Section 5 of the 1965 Act granted all existing satisfactory concessioners a preference in the renewal (termed a "renewal preference" for purposes of this section) of its concession contract or permit as a statutory right. The repeal of the 1965 Act by the 1998 Act repealed this statutory renewal preference as of November 13, 1998. Standard 1965 Act concession contracts awarded by the Director did not provide a renewal preference as a matter of a contract right. However, if a concessioner holds a 1965 Act concession contract in effect as of November 13, 1998, and the concessioner considers that the particular terms and conditions of its 1965 Act concession contract grant the concessioner, as a matter of contract right, a renewal preference, the concessioner may appeal this position to the Director. 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 concessioner submitting such an appeal, if its appeal is still pending as of the date for submission for proposals pursuant to an applicable prospectus, must submit a responsive proposal pursuant to the prospectus. If the concessioner fails to submit a responsive proposal, the Director must consider the concessioner's appeal moot and no renewal preference will apply to the new concession contract. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus.

(b) 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. The written decision on the appeal must be issued before the Director selects the best proposal received pursuant to the applicable prospectus. If the appeal results in the appealing concessioner being determined as having a renewal preference under a 1965 Act contract, and the appealing concessioner does or did submit a responsive proposal, the concessioner will be entitled to exercise a right of preference to the concession contract as otherwise described in and subject to the otherwise applicable conditions of this part, including, but not limited to, the requirement to submit a responsive offer under an applicable prospectus. No person will be considered as having exhausted administrative remedies with respect to assertion of the existence of a renewal preference under a 1965 Act concession contract until the Director makes an appeal decision in accordance with this section. Any renewal preference the Director may determine to exist pursuant to this section will apply only to the award of the first concession contract that replaces a 1965 Act concession contract.

§ 51.117 What renewal preference exceptions are made for Glacier Bay cruise ships?

Notwithstanding the provisions of the 1998 Act which repealed the statutory renewal preference provided by the 1965 Act, the Director, in awarding future Glacier Bay cruise ship concession contracts covering cruise ship entries for which a renewal preference existed prior to the passage of the 1998 Act, must provide for such cruise ship entries a right of preference as described in this part even though such cruise ship concession contracts are not outfitter and guide contracts and may result in annual gross receipts in excess of \$500,000. The final date of expiration of any Glacier Bay cruise ship concession contract awarded under this special authority will be December 31, 2009.

Subpart L—Information Collection

§ 51.118 Have information collection procedures been followed?

(a) The information collection for submission of offers in response to concession prospectuses contained in this part have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0125, effective through December 31, 1999. An information collection for proposed sales of concession operations was previously covered by OMB Approval

No. 1024-0126, which expired January 31, 1996. An OMB form 83-I has been prepared but has not yet been approved by OMB. Response is required to obtain a concession contract in accordance with the 1998 Act.

(1) As required by 5 CFR 1320.8(d)(1), the National Park Service is soliciting public comments as to:

(i) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(ii) The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(iii) The quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

(2) A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(b) The public reporting burden for the collection of information for the purpose of preparing a proposal in response to a contract solicitation is estimated to average 480 hours per proposal for large authorizations and 240 hours per proposal for small authorizations. The public reporting burden for the collection of information for the purpose of requesting approval

of a sale or transfer of a concession operation is estimated to be 80 hours. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: June 23, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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