

Subchapter II—Commercial Visitor Services

§ 101911. Definitions

In this subchapter:

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

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

§ 101912. Findings and declaration of policy

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

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

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

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

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

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

§ 101913. Award of concession contracts

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

(1) **COMPETITIVE SELECTION PROCESS.**—Except as otherwise provided in this section, all proposed concession contracts shall be awarded by the Secretary to the person, corporation, or other entity submitting the best proposal, as determined by the Secretary through a competitive selection process. The competitive process shall include simplified procedures for

small, individually-owned entities seeking award of a concession contract.

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

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

(B) in connection with the solicitation, shall—

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

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

(3) INFORMATION TO BE INCLUDED IN PROSPECTUS.—The prospectus shall include the following information:

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

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

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

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

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

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

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

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

(4) CONSIDERATION OF PROPOSALS.—

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

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

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

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

(B) REJECTION OF PROPOSAL.—The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that—

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

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

(C) ALL PROPOSALS FAIL TO MEET MIMIMUM REQUIREMENTS OR ARE REJECTED.—If all proposals submitted to the Secretary fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(D) TERMS AND CONDITIONS MATERIALLY AMENDED OR NOT INCORPORATED IN CONTRACT.—The Secretary may not execute a concession contract that materially amends or does not incorporate the proposed terms and conditions of the concession contract as set forth in the applicable prospectus. If proposed material amendments or changes are considered appropriate by the Secretary, the Secretary shall resolicit offers for the concession contract incorporating the material amendments or changes.

(5) SELECTION OF THE BEST PROPOSAL.—

(A) FACTORS IN SELECTION.—In selecting the best proposal, the Secretary shall consider the following principal factors:

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

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

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

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

(B) SECONDARY FACTORS.—The Secretary may also consider such secondary factors as the Secretary considers appropriate.

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

(6) CONGRESSIONAL NOTIFICATION.—

(A) IN GENERAL.—The Secretary shall submit any proposed concession contract with anticipated annual gross

receipts in excess of \$5,000,000 or a duration of more than 10 years to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

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

(7) PREFERENTIAL RIGHT OF RENEWAL.—

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

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

(C) ENTITLEMENT TO AWARD OF NEW CONTRACT.—A concessioner that successfully exercises a preferential right of renewal in accordance with the requirements of this subchapter shall be entitled to award of the proposed new concession contract to which the preference applies.

(8) OUTFITTER AND GUIDE SERVICES AND SMALL CONTRACTS.—

(A) APPLICATION.—Paragraph (7) shall apply only to the following:

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

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

(B) OUTFITTING AND GUIDE CONCESSIONERS.—

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

(ii) WHEN ENTITLED TO PREFERENTIAL RIGHT.—An outfitting and guide concessioner is entitled to a preferential right of renewal under this subchapter only if—

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

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

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

(C) CONTRACT WITH ESTIMATED GROSS RECEIPTS OF LESS THAN \$500,000.—A concessioner that holds a concession contract that the Secretary estimates will result in gross annual receipts of less than \$500,000 if renewed shall be entitled to a preferential right of renewal under this subchapter if—

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

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

(9) NEW OR ADDITIONAL SERVICES.—The Secretary shall not grant a preferential right to a concessioner to provide new or additional services in a System unit.

(10) AUTHORITY OF SECRETARY NOT LIMITED.—Nothing in this subchapter shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this subchapter.

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

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

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

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

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

§ 101914. Term of concession contracts

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

including the required construction of capital improvements, warrant a longer term.

§ 101915. Protection of concessioner investment

(a) DEFINITIONS.—In this section:

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

(2) CONSUMER PRICE INDEX.—The term “Consumer Price Index” means—

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

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

(b) LEASEHOLD SURRENDER INTEREST IN CAPITAL IMPROVEMENTS.—A concessioner that constructs a capital improvement on land owned by the United States within a System unit pursuant to a concession contract shall have a leasehold surrender interest in the capital improvement subject to the following terms and conditions:

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

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

(3) TRANSFER AND RELINQUISHMENT OR WAIVER OF INTEREST.—A leasehold surrender interest shall be transferred by the concessioner in connection with any transfer of the concession contract and may be relinquished or waived by the concessioner.

(4) LIMIT ON EXTINGUISHING OR TAKING INTEREST.—A leasehold surrender interest shall not be extinguished by the expiration or other termination of a concession contract and may not be taken for public use except on payment of just compensation.

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

(6) VALUE OF INTEREST IN CERTAIN NEW CONCESSION CONTRACTS.—

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

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

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

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

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

(c) SPECIAL RULE FOR POSSESSORY INTEREST EXISTING BEFORE NOVEMBER 13, 1998.—

(1) IN GENERAL.—A concessioner that has obtained a possessory interest (as defined pursuant to the Act of October 9, 1965 (known as the National Park Service Concessions Policy Act; Public Law 89–249, 79 Stat. 969), as in effect on November 12, 1998) under the terms of a concession contract entered into before November 13, 1998, shall, on the expiration or termination of the concession contract, be entitled to receive compensation for the possessory interest improvements in the amount and manner as described by the concession contract. Where that possessory interest is not described in the existing concession contract, compensation of possessory interest shall be determined in accordance with the laws in effect on November 12, 1998.

(2) EXISTING CONCESSIONER AWARDED A NEW CONTRACT.—A concessioner awarded a new concession contract to replace an existing concession contract after November 13, 1998, instead of directly receiving the possessory interest compensation, shall have a leasehold surrender interest in its existing possessory interest improvements under the terms of the new

concession contract and shall carry over as the initial value of the leasehold surrender interest (instead of construction cost) an amount equal to the value of the existing possessory interest as of the termination date of the previous concession contract. In the event of a dispute between the concessioner and the Secretary as to the value of the possessory interest, the matter shall be resolved through binding arbitration.

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

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

(d) TRANSITION TO SUCCESSOR CONCESSIONER.—On expiration or termination of a concession contract entered into after November 13, 1998, a concessioner shall be entitled under the terms of the concession contract to receive from the United States or a successor concessioner the value of any leasehold surrender interest in a capital improvement as of the date of the expiration or termination. A successor concessioner shall have a leasehold surrender interest in the capital improvement under the terms of a new concession contract and the initial value of the leasehold surrender interest in the capital improvement (instead of construction cost) shall be the amount of money the new concessioner is required to pay the prior concessioner for its leasehold surrender interest under the terms of the prior concession contract.

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

§ 101916. Reasonableness of rates and charges

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

(b) APPROVAL BY SECRETARY REQUIRED.—

(1) FACTORS TO CONSIDER.—A concessioner's rates and charges to the public shall be subject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable.

The Secretary shall approve rates and charges that the Secretary determines to be reasonable and appropriate. Unless otherwise provided in the concession contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant by the Secretary:

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

(2) RATES AND CHARGES NOT TO EXCEED MARKET RATES AND CHARGES.—Rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking into account the factors referred to in paragraph (1).

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

§ 101917. Franchise fees

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

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

(c) SPECIAL ACCOUNT IN TREASURY.—

(1) DEPOSIT AND AVAILABILITY.—All franchise fees (and other monetary consideration) paid to the United States pursuant to concession contracts shall be deposited in a special account established in the Treasury. Twenty percent of the funds deposited in the special account shall be available for expenditure by the Secretary, without further appropriation, to support activities throughout the System regardless of the System unit

in which the funds were collected. The funds deposited in the special account shall remain available until expended.

(2) SUBACCOUNT FOR EACH SYSTEM UNIT.—There shall be established within the special account a subaccount for each System unit. Each subaccount shall be credited with 80 percent of the franchise fees (and other monetary consideration) collected at a single System unit under concession contracts. The funds credited to the subaccount for a System unit shall be available for expenditure by the Secretary, without further appropriation, for use at the System unit for visitor services and for purposes of funding high-priority and urgently necessary resource management programs and operations. The funds credited to a subaccount shall remain available until expended.

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

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

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

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

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

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

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

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

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

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

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

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

§ 101919. National Park Service Concessions Management Advisory Board

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

(b) DUTIES.—

(1) **ADVICE.**—The Advisory Board shall advise on each of the following:

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

(i) are necessary and appropriate;

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

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

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

(2) **RECOMMENDATIONS.**—The Advisory Board shall make recommendations to the Secretary regarding each of the following:

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

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

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

(D) The allocation of concession fees.

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

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

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

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

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

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

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

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

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

(d) **SERVICE ON ADVISORY BOARD.**—Service of an individual as a member of the Advisory Board shall not be deemed to be service or employment bringing the individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the

employment of individuals, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Advisory Board shall not be deemed service in an appointive or elective position in the Federal Government for purposes of section 8344 of title 5 or other comparable provisions of Federal law.

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

§ 101920. Contracting for services

(a) **CONTRACTING AUTHORIZED.**—

(1) **MANAGEMENT ELEMENTS FOR WHICH CONTRACT REQUIRED TO MAXIMUM EXTENT PRACTICABLE.**—To the maximum extent practicable, the Secretary shall contract with private entities to conduct or assist in elements of the management of the Service concession program considered by the Secretary to be suitable for non-Federal performance. Those management elements shall include each of the following:

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

(2) **MANAGEMENT ELEMENTS FOR WHICH CONTRACT ALLOWED.**—The Secretary may also contract with private entities to assist the Secretary with each of the following:

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

(b) **OTHER MANAGEMENT ELEMENTS.**—The Secretary shall consider, taking into account the recommendations of the Advisory Board, contracting out other elements of the concessions management program, as appropriate.

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

§ 101921. Multiple contracts within a System unit

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

to renegotiation by the Secretary because of an award of a new contract at the same approximate location or resource.

§ 101922. Use of nonmonetary consideration in concession contracts

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

§ 101923. Recordkeeping requirements

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

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

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

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

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

§ 101925. Commercial use authorizations

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

(b) CRITERIA FOR ISSUANCE OF COMMERCIAL USE AUTHORIZATIONS.—

(1) REQUIRED DETERMINATIONS.—The authority of this section may be used only to authorize provision of services that the Secretary determines—

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

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

(2) ELEMENTS OF COMMERCIAL USE AUTHORIZATION.—The Secretary shall—

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

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

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

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

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

(c) LIMITATIONS.—Any commercial use authorization shall be limited to—

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

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

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

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

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

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

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

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

§ 101926. Regulations

(a) IN GENERAL.—The Secretary shall prescribe regulations appropriate for the implementation of this subchapter.

(b) CONTENTS.—The regulations—

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

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

Chapter 1021—Privileges and Leases

Sec.

102101. General provisions.

102102. Authority of Secretary to enter into lease for buildings and associated property.

§ 102101. General provisions

(a) LIMITATION.—

(1) NO LEASE OR GRANT OF A PRIVILEGE THAT INTERFERES WITH FREE ACCESS.—No natural curiosity, wonder, or object of interest shall be leased or granted to anyone on such terms as to interfere with free access by the public to any System unit.

(2) EXCEPTION FOR GRAZING LIVESTOCK.—The Secretary, under such regulations and on such terms as the Secretary may prescribe, may grant the privilege to graze livestock within a System unit when, in the Secretary’s judgment, the use is not detrimental to the primary purpose for which the System unit was created. This paragraph does not apply to Yellowstone National Park.

(b) ADVERTISING AND COMPETITIVE BIDS NOT REQUIRED.—The Secretary may grant privileges and enter into leases described in subsection (a), and enter into related contracts with responsible persons, firms, or corporations, without advertising and without securing competitive bids.

(c) ASSIGNMENT OR TRANSFER.—No contract, lease, or privilege described in subsection (a) or (b) that is entered into or granted shall be assigned or transferred by the grantee, lessee, or licensee without the prior written approval of the Secretary.

§ 102102. Authority of Secretary to enter into lease for buildings and associated property

(a) IN GENERAL.—To facilitate the administration of the System, the Secretary, under such terms and conditions as the Secretary may consider advisable, and except as provided in subsection (b) and subject to subsection (c), may enter into a lease with any person or government entity for the use of buildings and associated property administered by the Secretary as part of the System.

(b) PROHIBITED ACTIVITIES.—The Secretary may not use a lease under subsection (a) to authorize the lessee to engage in activities that are subject to authorization by the Secretary through a concession contract, commercial use authorization, or similar instrument.

(c) USE.—Buildings and associated property leased under subsection (a)—