

2018
Edition

Commercial Services Guide

**NATIONAL PARK SERVICE
COMMERCIAL SERVICES PROGRAM**

Table of Contents

Chapter 1: Introduction to the Commercial Services Guide	8
1.1 Purpose	9
1.2 The Directives System.....	9
1.3 How to Use the CS Guide.....	9
1.4 Common Terms and List of Acronyms	10
Chapter 2: Program Overview.....	13
2.1 Introduction	14
2.2 History of the Commercial Services Program	14
2.2.1 <i>The Program</i>	14
2.3 General Statutory, Regulatory, and Policy Framework.....	15
2.3.1 <i>Current Statutes</i>	15
2.3.2 <i>Current Regulations</i>	15
2.3.3 <i>Current Policies</i>	15
2.3.4 <i>Director's Orders</i>	15
2.3.5 <i>Concession Contracts</i>	15
2.3.6 <i>Commercial Use Authorizations</i>	15
2.3.7 <i>Leases</i>	15
2.3.8 <i>VEIA Contracts</i>	16
2.4 Commercial Services Program Workforce	16
2.5 Program Ethics.....	16
2.5.1 <i>Bribery – 18 U.S.C. 201</i>	16
2.5.2 <i>Gifts from Outside Sources – Subpart B, 5 C.F.R 2635</i>	16
2.5.3 <i>Conflicting Financial Interests – Subpart D, 5 CFR 2635</i>	17
2.5.4 <i>Use of Official Position – Subpart G</i>	17
2.6 Freedom of Information Act Policies and Procedures	17
2.6.1 <i>General Program Documents</i>	17
2.6.2 <i>Proposal and Evaluation Documents</i>	17
2.6.3 <i>Concessioner Financial Information</i>	17
2.6.4 <i>Concessioner Records and Correspondence</i>	18
2.7 Administrative Record/Record Retention	18
2.8 Delegations of Authority	18
2.8.1 <i>Regulatory Limitations on Delegations</i>	18
2.8.2 <i>Policy Delegations of Authority for Concession Contract Actions</i>	19
2.8.3 <i>Policy Delegations of Authority for Asset Management and Value Determinations</i>	22
2.8.4 <i>Policy Delegations of Authority for Contract Management</i>	24
2.8.5 <i>CS Management Delegations</i>	24
Chapter 3: Planning	25
3.1 Introduction	26
3.2 NPS Planning Overview.....	26
3.2.1 <i>Park</i>	26
3.2.2 <i>Region</i>	26
3.2.3 <i>Washington Area Support Office</i>	26
3.2.4 <i>Concessioner Participation in Planning</i>	27
3.3 Types of Commercial Services Planning Documents	27
3.3.1 <i>Commercial Services Strategy</i>	27
3.3.2 <i>Commercial Services Plan</i>	28
3.4 Primary Planning Considerations.....	28
3.4.1 <i>Necessary and Appropriate Determination</i>	28

3.4.2	<i>Financial Feasibility Analysis</i>	30
3.4.3	<i>Preservation and Conservation of Park Resources and Values</i>	30
3.5	Other Planning Considerations	31
3.5.1	<i>Sustainable Design and Practices</i>	31
3.5.2	<i>Randolph-Sheppard Act</i>	31
3.5.3	<i>Cooperating Associations</i>	32
Chapter 4: Prospectus Development.....		34
4.1	Introduction	35
4.2	Phase 1: Planning and Project Strategy Development	35
4.2.1	<i>Project Research and Data Collection</i>	35
4.2.2	<i>Project Definition</i>	37
4.2.3	<i>Roles, Responsibilities, and Timeline</i>	38
4.2.4	<i>Federal Acquisition Regulation Contracting Process</i>	38
4.3	Phase 2: Scenario Research, Analysis and Decision	40
4.3.1	<i>Due Diligence</i>	40
4.3.2	<i>Market Analysis</i>	40
4.3.3	<i>Rate Study</i>	41
4.3.4	<i>Personal Property Valuation</i>	41
4.3.5	<i>Financial Baseline Buildup Report</i>	42
4.3.6	<i>Concessions Facility Improvement Program Analysis</i>	44
4.3.7	<i>Scenario Analysis and Meeting</i>	45
4.3.8	<i>Insurance Requirements</i>	46
4.3.9	<i>Scenario Executive Summary</i>	47
4.3.10	<i>Franchise Fee Analysis</i>	47
4.3.11	<i>Real Property Condition Assessment</i>	48
4.4	Phase 3 - Prospectus Document Development and Review	50
4.4.1	<i>Draft Prospectus Documents</i>	50
4.4.2	<i>Roundtable Meeting</i>	53
4.4.3	<i>Final Policy/Legal Review of Prospectus Documents</i>	54
4.4.4	<i>Issue Prospectus</i>	54
4.5	Simplified Prospectuses for Small Concessions Contracts	54
4.5.1	<i>Simplified Prospectus Procedures (Pending Results of Test Projects)</i>	55
4.6	Preferred Offeror Determination	55
Chapter 5: Contract Solicitation, Selection, and Award		56
5.1	Introduction	57
5.2	Contract Solicitation	57
5.2.1	<i>Advertising</i>	57
5.2.2	<i>Site Visit</i>	58
5.2.3	<i>Questions during the Solicitation Period</i>	60
5.2.4	<i>Amendment and Cancellation of Prospectuses</i>	60
5.2.5	<i>Amendments to and Clarification of Proposals by Offerors</i>	61
5.3	Proposal Evaluation and Selection	62
5.3.1	<i>Receipt and Safeguarding of Proposals</i>	62
5.3.2	<i>Evaluation Panels</i>	63
5.3.3	<i>Evaluation Panel Membership</i>	63
5.3.4	<i>Panel Responsibilities and Procedures</i>	65
5.3.5	<i>Selection of the Best Proposal When Two or More Proposals Receive the Same Highest Score</i> ..	69
5.3.6	<i>Exercise of Right of Preference</i>	70
5.3.7	<i>Selection Notification</i>	71
5.4	Post Selection Actions.....	71
5.4.1	<i>Regional Level Contracts</i>	71

5.4.2	WASO-Level Contracts	72
5.4.3	Final Contract Preparation and Award.....	72
5.4.4	Contract Distribution.....	74
5.4.5	Debriefing Policy Procedures.....	74
5.4.6	Administrative Record	75
5.4.7	Appeals to the Selection of a Best Offer for a Concession Contract.....	76
5.5	Temporary Contracts.....	76
5.5.1	Limitations of a Temporary Contract	76
5.5.2	Steps for Awarding a Temporary Contract.....	76
5.6	Sole Source Long-term Contracts	78
5.6.1	Process for Consideration of Sole Source Long-Term Contracts:.....	78
Chapter 6: Contract Management		80
6.2	Introduction	81
6.3	Managing Contract Changes.....	81
6.3.1	Contract Transition and New Contract Implementation	81
6.3.2	Contract Modification/Amendment.....	83
6.3.3	Contract Extension/Continuation.....	84
6.3.4	Contract Termination	84
6.3.5	Contract Suspension	87
6.3.6	Assignments and Encumbrances.....	87
6.3.7	Temporary Contracts.....	91
6.3.8	Temporary Shutdowns of Concession Operations.....	91
6.4	Contract Document Management	92
6.4.1	Managing the Contract and Contract Exhibits	92
6.5	Operating Plan	93
6.6	Maintenance Plan	93
6.7	Land and Property Documentation	93
6.7.1	Assigned Land, Real Property and Government-assigned Personal Property.....	93
6.7.2	Concessioner-owned Personal Property	94
6.8	Other Contract Documents	94
6.9	Concession Insurance Management.....	94
6.9.1	Introduction	94
6.9.2	Initial Insurance Requirements and Coverage Minimums.....	94
6.9.3	Changing Insurance Requirements and Coverage Minimums	94
6.9.4	Insurance Compliance Review	95
6.9.5	Visitor Acknowledgement of Risk	96
6.9.6	Insurance Technical Support, Guidance and Training	97
6.10	Concession Management Programs	97
6.10.1	Environmental Management.....	97
6.10.2	Concession Risk Management.....	100
6.10.3	Concession Public Health Management.....	104
6.10.4	Concession Asset Management	106
6.11	Concession Visitor Satisfaction	106
6.11.1	Concessioner VSP	107
6.11.2	Commercial Services VSP.....	107
6.12	Concession Rate Administration.....	108
6.12.1	Rate Administration Authorities.....	108
6.12.2	Rate Methods and Conditions.....	108
6.12.3	Rate Request, Analysis, Approval, and Appeal Procedures	110
6.12.4	Monitoring Compliance with Approved Rates	110
6.12.5	Rate Administration Technical Support	110
6.12.6	Specific Concessioner Rate Administration-related Procedures and Practices	110

6.12.7	<i>Paying Reduced Rates and Accepting Items of Nominal Value from Concessioners</i>	114
6.13	Concession Utility Management	116
6.13.1	<i>Setting NPS Utility Rates</i>	116
6.13.2	<i>Managing Utility Charges in Concession Contracts</i>	116
6.13.3	<i>Managing Utility Rates and Add-ons</i>	118
6.13.4	<i>Utility Charge Waiver</i>	118
6.14	Concession Reservation Practices	118
6.14.1	<i>Reservations General Requirements and Limitations</i>	119
6.14.2	<i>Managing Commercial Groups</i>	119
6.14.3	<i>Reservation Systems</i>	120
6.14.4	<i>Deposits, Refunds, and Cancellations</i>	121
6.15	Other Contract Management Practices	122
6.15.1	<i>Concessioner Advertising</i>	122
6.15.2	<i>Intellectual Property and Marks</i>	124
6.15.3	<i>Merchandise and Handicrafts</i>	126
6.15.4	<i>Concessioner Personnel Management</i>	131
6.15.5	<i>Time Sharing Agreements</i>	132
6.15.6	<i>Donations</i>	133
6.15.7	<i>Employment by Concessioners and Ownership of or Investment in Concession Businesses</i>	136
6.15.8	<i>Cooperating Associations</i>	136
6.16	Other Operating Requirements	137
6.16.1	<i>Weights and Measures – Gas and Oil</i>	137
6.16.2	<i>Smoking in Public Buildings</i>	137
6.16.3	<i>Sales or Use Tax</i>	138
6.16.4	<i>Nondiscrimination and Accessibility for Visitors</i>	138
6.16.5	<i>Visitor Amenity Services</i>	139
6.16.6	<i>Scenic Viewers</i>	139
6.16.7	<i>Electric Vehicle Charging Systems</i>	139
6.16.8	<i>Wireless Internet Service</i>	140
6.16.9	<i>Vending Machines</i>	140
6.16.10	<i>Trailer Villages</i>	141
Chapter 7: Concessioner Review Program		142
7.1	Introduction	143
7.2	Qualifications for Conducting Evaluations	144
7.3	Visitor Service Standards and Operational Performance Evaluation	144
7.3.1	<i>Visitor Service Standards</i>	144
7.3.2	<i>Periodic Evaluations</i>	150
7.3.3	<i>Additional Sources of Information for Periodic Evaluations</i>	153
7.3.4	<i>Periodic Evaluation Score, Rating, Documentation, and Corrective Action Planning</i>	154
7.3.5	<i>Periodic Evaluation Follow-up</i>	155
7.3.6	<i>Operational Performance Evaluation and Report</i>	157
7.4	Risk Management Program Standards and Evaluation	157
7.4.1	<i>RMP Standards</i>	157
7.4.2	<i>RMP Evaluation Frequency and Timing</i>	158
7.4.3	<i>RMP Evaluators</i>	158
7.4.4	<i>RMP Evaluation Procedures</i>	158
7.4.5	<i>RMP Evaluation Scoring, Rating, Documentation, and Corrective Action Planning</i>	160
7.4.6	<i>RMP Evaluation Follow-up</i>	160
7.4.7	<i>Compiling the RMP Evaluation Rating</i>	161
7.5	Environmental Management Program Standards and Evaluation	161
7.5.1	<i>EMP Standards</i>	161
7.5.2	<i>EMP Evaluation Frequency and Timing</i>	162

7.5.3	<i>EMP Evaluators</i>	162
7.5.4	<i>EMP Evaluation Procedures</i>	162
7.5.5	<i>EMP Evaluation Scoring, Rating, Documentation, and Corrective Action Planning</i>	163
7.5.6	<i>EMP Evaluation Follow-up</i>	164
7.5.7	<i>Compiling the EMP Evaluation Rating</i>	164
7.6	Public Health Program Standards and Evaluation	164
7.6.1	<i>PHP Standards</i>	164
7.6.2	<i>PHP Evaluation Frequency and Timing</i>	165
7.6.3	<i>PHP Evaluators</i>	165
7.6.4	<i>PHP Evaluation Procedures</i>	165
7.6.5	<i>PHP Evaluation Report Rating, Documentation and Corrective Action Planning</i>	166
7.6.6	<i>PHP Evaluation Follow-up</i>	166
7.6.7	<i>Compiling the Annual PHP Evaluation Report</i>	166
7.7	Asset Management Program Standards and Evaluation	166
7.7.1	<i>AMP Standards</i>	167
7.7.2	<i>AMP Evaluation Frequency and Timing</i>	168
7.7.3	<i>AMP Evaluators</i>	168
7.7.4	<i>AMP Evaluation Procedures</i>	168
7.7.5	<i>AMP Evaluation Score, Rating, Documentation and Corrective Action Planning</i>	169
7.7.6	<i>AMP Evaluation Follow-up</i>	169
7.7.7	<i>Compiling the AMP Evaluation Rating</i>	170
7.8	Administrative Compliance Standards and Evaluation	170
7.8.1	<i>Administrative Compliance Standards</i>	170
7.8.2	<i>Administrative Compliance Evaluation Frequency and Timing</i>	172
7.8.3	<i>Administrative Compliance Evaluators</i>	172
7.8.4	<i>Administrative Compliance Evaluation and Rating Procedures</i>	172
7.8.5	<i>Administrative Compliance Evaluation Rating and Documentation</i>	173
7.9	Annual Overall Rating and Report	173
7.9.1	<i>Annual Overall Rating and Report Procedures</i>	173
7.9.2	<i>Final AOR Report Submittal, Review and Archive</i>	174
7.9.3	<i>Disposition of Unsatisfactory and Marginal AORs</i>	174
7.9.4	<i>AOR Appeal Process</i>	175
7.10	Other Inspections and Evaluations	175
Chapter 8: Concession Facilities Management		177
8.2	Introduction	178
8.3	Facility Management Authorities	178
8.3.1	<i>Laws and Acts</i>	178
8.3.2	<i>Regulations</i>	178
8.3.3	<i>Policies</i>	179
8.3.4	<i>Concession Contracts and Asset Management</i>	179
8.4	Asset Management	180
8.4.1	<i>Asset Life Cycle and Contract Life Cycle</i>	180
8.4.2	<i>Work Types and Subtypes</i>	181
8.4.3	<i>Funding Sources</i>	182
8.4.4	<i>Condition Assessments</i>	184
8.4.5	<i>Inspections</i>	185
8.4.6	<i>Repair and Maintenance Reserve</i>	185
8.4.7	<i>Monitor</i>	186
8.4.8	<i>Annual Financial Reporting</i>	187
8.4.9	<i>LSI Implications</i>	187
8.4.10	<i>Maintenance Plan</i>	187
8.4.11	<i>Facility Management Software System</i>	188

8.4.12	<i>Annual Deferred Maintenance Reporting</i>	188
8.4.13	<i>Concessions Work Order Transfer Tool</i>	189
8.4.14	<i>Reporting</i>	189
8.4.15	<i>Concessioner Funded Construction Projects</i>	190
8.5	<i>Contract Transition and Asset Management</i>	193
Chapter 9: Leasehold Surrender Interest Management		195
9.2	<i>Introduction</i>	196
9.2.1	<i>LSI Improvements</i>	196
9.2.2	<i>Why Track LSI Value?</i>	197
9.3	<i>LSI Value Formulas</i>	198
9.3.1	<i>Standard Formula</i>	198
9.3.2	<i>Alternative Formulas</i>	198
9.3.3	<i>Fixture Value Formulas</i>	198
9.3.4	<i>New Fixture</i>	199
9.3.5	<i>Fixture Replacement</i>	199
9.4	<i>Construction of Capital Improvements</i>	199
9.5	<i>LSI Additions during Contract Term</i>	199
9.5.1	<i>New Construction or Major Rehabilitations</i>	199
9.5.2	<i>Fixture Replacement Reports</i>	200
9.6	<i>LSI Value Estimates</i>	200
9.6.1	<i>LSI Estimates for Prospectus and Negotiation Purposes</i>	201
9.7	<i>LSI Negotiations</i>	201
9.7.1	<i>Proposed LSI Negotiation Value</i>	201
9.8	<i>LSI Arbitrations</i>	202
9.8.1	<i>LSI Arbitration Approvals</i>	202
9.9	<i>LSI Waivers</i>	202
9.10	<i>LSI Compensation</i>	203
9.10.1	<i>Partial or Full Compensation for LSI Value</i>	203
9.10.2	<i>Prior LSI Contract to a New LSI Contract</i>	203
9.10.3	<i>Prior PI Contract to an LSI Contract</i>	203
9S.1	<i>Introduction</i>	204
9S.2	<i>PI Improvement Valuation</i>	204
9S.3	<i>PI Value Estimates</i>	204
9S.3.1	<i>PI Estimates for Prospectuses and Negotiation Purposes</i>	204
9S.3.2	<i>PI Estimates for Arbitration Purposes</i>	204
9S.3.3	<i>PI Value Estimate Approvals</i>	205
9S.4	<i>PI Negotiations</i>	205
9S.4.1	<i>Proposed PI Negotiation Value</i>	205
9S.4.2	<i>PI Negotiation Approvals</i>	206
9S.5	<i>PI Arbitrations</i>	206
9S.5.1	<i>PI Arbitration Approvals</i>	206
Chapter 10: Financial Management.....		207
10.1	<i>Introduction</i>	208
10.2	<i>Franchise Fees</i>	208
10.2.1	<i>Establishing Franchise Fees</i>	208
10.2.2	<i>Franchise Fee Reconsideration and Waiver of Franchise Fees</i>	209
10.2.3	<i>Processing and Reconciling Franchise Fee Payments</i>	212
10.2.4	<i>Use of Franchise Fees</i>	213
10.3	<i>Financial Reporting</i>	218
10.3.1	<i>Annual Financial Reporting</i>	218
10.3.2	<i>AFR Submission</i>	221

10.3.3	<i>AFR Review</i>	222
Chapter 11: Commercial Use Authorizations (CUAs)		224
11.1	Purpose	225
11.2	CUA Program Statutory and Policy Framework.....	225
11.3	Compliance Process for CUAs.....	225
11.4	CUAs vs. Concession Contracts	226
11.5	Required CUA Forms	227
11.5.1	<i>Required CUA Application</i>	227
11.5.2	<i>Required CUA Reporting</i>	228
11.5.3	<i>CUA Forms Security and Retention</i>	229
11.6	CUA Fees	229
11.6.1	<i>CUA Application Fee</i>	229
11.6.2	<i>CUA Management Fee</i>	230
11.6.3	<i>Reviewing Costs and Fees</i>	231
11.6.4	<i>Collecting Fees</i>	232
11.7	CUA Accounting.....	232
11.8	CUA Fund Expenditure.....	232
11.9	CUA Insurance.....	233
11.9.1	<i>Commercial General Liability Insurance</i>	233
11.9.2	<i>Other Types of Liability Insurance</i>	234
11.9.3	<i>Required Certificate of Liability Insurance</i>	236
11.9.4	<i>Visitor Acknowledgment of Risk</i>	237
11.10	Limiting CUAs	237
11.10.1	<i>Limiting CUA Activities through Conditions</i>	237
11.10.2	<i>Limiting the Number of CUAs</i>	238
11.10.3	<i>Competing and Awarding a Limited Number of CUAs</i>	238
11.11	CUA Suspension and Revocation.....	240
11.12	CUAs to Nonprofit Organizations	241
Chapter 12: Glossary of Terms.....		242

Chapter 1: Introduction to the Commercial Services Guide

1.1 Purpose

The Commercial Services Guide (CS Guide) provides detailed procedures to implement current laws, regulations, Executive Orders, Department of the Interior (DOI) policies and guidance, NPS Management Policies 2006, and other NPS policy and guidance related to commercial services. This CS Guide will be periodically updated. Users should ensure that they have the most current version of the CS Guide. The CS Guide supersedes NPS-48 and consolidates most policy memoranda issued since the issuance of NPS-48. Any Commercial Services Program (CS or the Program) policy memos issued before the release of this CS Guide which are still in effect are identified in applicable chapters of this CS Guide. Policy memorandum issued since this version of the CS Guide have not been incorporated. These policy memoranda are still in effect.

This CS Guide addresses commercial use authorizations (CUAs) and leases in the as relates to concession contract planning. However, the CS Guide does not comprehensively address these two commercial visitor service authorizations at this time. Readers should refer to separate policy and guidance on these other two commercial services authorizations. This CS Guide also does not address contracts that may be issued under the Visitor Experience Improvement Authority (VEIA) Guidance for VEIA authorizations may be added to the CS Guide in the future.

1.2 The Directives System

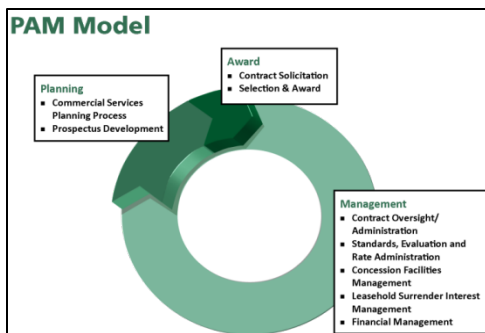
After the DOI develops regulations, the NPS creates three levels of service authorities to guide employee compliance with departmental regulations, federal laws, executive orders, and judicial decisions. The three levels of NPS service authorities are:

- ◆ **Level 1 Service Authorities** - Management Policies that set the broad framework, provide direction, and prescribe parameters for making management decisions to meet laws, regulations, executive orders, and policies.
- ◆ **Level 2 Service Authorities** - Director's Orders (DOs) that provide more detailed interpretation of Management Policies, and delegate specific authorities and responsibilities. DOs articulate or revise policy on an interim basis between publications of Management Policies. DOs supplement and, in some cases, may amend Management Policies.
- ◆ **Level 3 Service Authorities** - documents that include handbooks, RMs, and other text containing comprehensive information in support of field and programmatic operations.

The CS Guide is a Level 3 authority.

1.3 How to Use the CS Guide

The CS Guide follows the Planning-Award-Management Model (PAM Model) commonly used to describe concession contract activities. Links provide access to referenced laws, regulations, executive orders, and policies from other sources. Chapters 2-5 describe the processes for planning for commercial services, developing prospectuses, soliciting and evaluating proposals, and awarding new concession contracts. Chapters 6-10 describe the processes for contract oversight and evaluation including operating standards, facilities management, leasehold surrender interest (LSI) management, and financial management. The CS Guide also includes a supplement addressing possessory interest (PI) and special accounts for the remaining contracts that include those items.



Please submit comments concerning the contents of or use of the CS Guide to commercial_services@nps.gov.

1.4 Common Terms and List of Acronyms

A list of common terms is provided below to assist the reader in understanding those most commonly used in the Program. The list of terms is followed by a table of acronyms used in this Guide. A comprehensive glossary of terms is provided as an appendix to this CS Guide.

List of Common CS Terms

- ◆ **Park** – This term is used generically to cover all types of NPS park units including national parks, monuments, recreation areas, seashores, and others.
- ◆ **Commercial Services** – This term encompasses concessions, CUAs, and leasing (for both businesses and residential purposes). Some parks or regions may use alternative terms such as concession program or business management. Not all regional or park programs include leasing.
- ◆ **Commercial Services Program** – Also referenced as the Program, or Commercial Services (CS). This term refers to the entire Servicewide program subject to this RM. We may further define this term by modifiers such as Washington Area Support Office (WASO), region, or park.
- ◆ **Commercial Services Program Chief** – This term describes WASO employees who oversee the WASO CS.
- ◆ **WASO Branch Chief** – This term describes the four supervisory concession management specialist positions at WASO – asset management, contract management, financial management, and planning and development.
- ◆ **Regional Chief** – This term encompasses the regional employees who oversee Commercial Services for each region. Some regions use a different functional title.
- ◆ **Concession Specialist** – This term encompasses the various titles used for full-time or collateral duty park employees who oversee commercial services. It also encompasses Program employees at the regional and WASO levels.
- ◆ **National Park Service Concessions Management Improvement Act of 1998 (P.L. 105-391)** – This law is referred to as the 1998 Act or the Concessions Management Improvement Act of 1998.

List of Acronyms

<i>Acronym</i>	<i>Term-title</i>
AAA	Assignment, Acceptance and Approval
ADA	Americans with Disabilities Act
ADM	Administrative Compliance

AFR	Annual Financial Reports
AMP	Asset Management Program
AOR	Annual Overall Rating
ATM	Automated Teller Machines
BMP	Best Management Practice
CA	Condition Assessment
CFIP	Concession Facility Improvement Program
CMMS	Computerized Maintenance Management System
CMPR	Concessioner Maintenance Plan and Report
CO	Contracting Officer
COR	Contracting Officer Representative
CPA	Certified Public Accountant
CPI	Consumer Price Index
CPRR	Concessioner Project Plan and Report
CR	Component Renewal
CS Guide	Commercial Services Guide
CS or the Program	Commercial Services Program
CSIRP	Commercial Services Incident Response Plan
CSP	Commercial Services Plan
CSS	Commercial Services Strategy
CUA	Commercial Use Authorization
CWOT	Concessions Work Order Transfer
DAB	Development Advisory Board
DM	Deferred Maintenance
DO	Director's Order
DOI	Department of the Interior
DOL	Department of Labor
E&P	Evaluation and Pricing
EAP	Environmental Audit Program
EBT	Electronic Business Transfer
EMP	Environmental Management Program
EVCS	Electric Vehicle Charging Stations
FAR	Federal Acquisition Regulation
FBMS	Financial Business Management System
FLREA	Federal Lands Recreation Enhancement Act
FM	Facility Maintenance
FMSS	Facility Management Software System
FO	Facility Operations
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FRR	Fixture Replacement Report
FWP	Fish and Wildlife and Parks
GAAP	Generally Accepted Accounting Principles

GPP	Green Parks Plan
Guiding Principles Buildings	The Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings
ICS	Service-Level Incident Command System
IDIQ	Indefinite Delivery/Indefinite Quantity
IGE	Internal Government Estimate
IRV	Insurance Replacement Values
LSI	Leasehold Surrender Interest
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NHPA	National Historic Preservation Act
NPF	National Park Foundation
OFCCP	Office of Federal Contract Compliance Programs
OPH	NPS Office of Public Health
OPPS	Office of Partnerships and Philanthropic Stewardship
OSHA	Occupational Safety and Health Act
PAM Model	Planning-Award-Management Model
PFMD	Park Facility Management Division
PHC	Public Health Consultant
PHP	Public Health Program
PI	Possessory Interest
PM	Preventive Maintenance
PR	Purchase Request
RFP	Request for Proposal
RFQ	Request for Qualifications
RM	Recurring Maintenance
RMP	Risk Management Program
RMR	Repair and Maintenance Reserve
ROD	Record of Decision
R-S Act	The Randolph-Sheppard Act
SCA	The Service Contract Act
SOP	Standard Operating Procedure
SOS	Scope of Services
SOW	Scope of Work
TAP	Technical Assistance Program
USEPA	Us Environmental Protection Agency
VAR	Visitor Acknowledgement of Risk
VEIA	Visitor Experience Improvement Authority
VSP	Visitor Satisfaction Program
WASO	Washington Area Support Office
WIFI	Wireless Internet

Chapter 2: Program Overview

2.1 Introduction

This chapter states the overall legal and regulatory authority for concession contracts found throughout the CS Guide. It also outlines the history of the program, describes the program workforce, ethical considerations, Freedom of Information Act (FOIA) and administrative recordkeeping procedures, and CS -related delegations.

The Secretary of the Interior has the ultimate authority for the NPS CS. The Secretary has delegated this authority to the director, who has delegated certain authorities to the deputy director of operations, the associate director of business services, the CS Chief, and the regional directors. Regional directors have delegated some authority to the superintendents. Authority to change or deviate from approved Service policy remains with the director, the deputy director of operations, and the associate director of business services. Specific delegations are described in more detail in Section 2.7 of this chapter.

2.2 History of the Commercial Services Program

The Concessions Policy Act of October 9, 1965 (79 Stat. 969), guided the Program for over 30 years. In the early 1990s, Congress identified the need for substantial reforms to the Program to improve the quality of visitor services and maintenance of facilities as well as to identify clearly the basis for managing rates charged to visitors and franchise fees paid to the United States.

The National Park Service Concessions Management Improvement Act was enacted on November 13, 1998. The 1998 Act increased competition and professionalized concessions management in the NPS by:

- Setting forth a competitive process for the selection and award of concession contracts.
- Limiting the right of preference to concession contracts for small operators (gross receipts less than \$500,000) and guide and outfitter services.
- Eliminating lengthy contracts (i.e., contracts in excess of 20 years) and stated a preference for 10-year terms with a maximum length of 20 years.
- Establishing LSI as the method of compensation for qualifying capital improvements.
- Allowing individual park units to retain 80% of franchise fees. The Program uses the remaining 20% to support program activities throughout the NPS.
- Requiring NPS oversight of concessioner rates.
- Calling for the payment of franchise fees to the government based on the “probable value” to the concessioner of the particular contract.
- Creating the Concessions Management Advisory Board.
- Encouraging the Secretary to obtain professional consulting services to assist in the management of the Program.

2.2.1 The Program

The CS Program:

- Improves visitor services by setting appropriate standards and asking for creative ideas from companies competing for contracts.
- Uses a prospectus process requiring greater investment of NPS time and resources.
- Provides more stringent environmental management of concessioner operations.
- Implements the law and DO’s through policies, procedures, and standard contract language.
- Increases the professionalism of concessions management employees, encourages use of private sector business practices, requires use of professional technical consultants, and supports increased training of Program employees.

2.3 General Statutory, Regulatory, and Policy Framework

The CS Program procedures are built upon a framework of laws, regulation and NPS policy. These are described in this section.

2.3.1 Current Statutes

The statutory authority includes The National Park Service Concessions Management Improvement Act of 1998, Part 4 of P.L. 105-391, and codified at 54 U.S.C. § 101911 et. seq. For the few remaining contracts issued under The Concession Management Act of 1965, some aspects of that law may still apply.

2.3.2 Current Regulations

The NPS developed Part 51 of Title 36 of the Code of Federal Regulations (36 C.F.R. Part 51) to define how the Service solicits, awards, and administers concession contracts.

2.3.3 Current Policies

NPS Management Policies 2006 provide management guidance specific to commercial visitor services. The CS Guide supports NPS Management Policies as well as current laws and regulations.

(See NPS Management Policies 2006, Chapter 10 for additional information)

2.3.4 Director's Orders

DO's support NPS Management Policies 2006 and provide more specific policy on how the NPS will manage its operations. There is currently no DO for Commercial Services. One may be developed in the future.

2.3.5 Concession Contracts

The 1998 Act requires the NPS to provide public accommodations, facilities, and services considered necessary and appropriate for public use and enjoyment of the park and consistent with the preservation and conservation of the park's resources and values such as food, lodging, retail, and marinas through concession contracts unless another statute allows an alternative method.

(NPS Management Policies 2006, Section 10.1 reiterates this provision)

2.3.6 Commercial Use Authorizations

The NPS issues CUAs for commercial activities that have minimal impact on park resources, such as hiking guides or photography instruction. Typically, CUA holders do not operate or maintain facilities inside a park. Other NPS guidance covers CUA policies and procedures. These may be consolidated in the CS Guide in the future.

2.3.7 Leases

Regulations at 36 CFR Parts 17 and 18 describe how and when the NPS may issue leases. The statutory authority for leasing provides that the NPS may not issue leases for services that are subject to authorization through a concession contract, CUA, or similar instrument. Other NPS guidance covers lease policies and procedures. These may be consolidated in the CS Guide in the future.

(See NPS Management Policies 2006, Section 8.12 - Leases. Also see DO-38 and RM 38 for additional information on leases)

2.3.8 VEIA Contracts

Title VII of the 2016 National Park Service Centennial Act, Pub. Law No. 114-289, establishes a new authority – the Visitor Experience Improvements Authority (VEIA) – that allows the NPS to solicit, award, and administer contracts for the operation and expansion of commercial visitor facilities and visitor programs. The VEIA is separate from and supplements the existing authority granted to the NPS under the 1965 and 1998 Acts to award concessions contracts. The NPS is currently establishing regulations and developing and testing contracting and management processes to be used under this new authority.

2.4 Commercial Services Program Workforce

The Program workforce includes all employees performing commercial services functions at the park, and WASO levels. Employees performing commercial services functions oversee concession contracts, leases, and CUAs, and include full-time and collateral duty employees. Outside consultants and contractors assist the Program workforce.

The Program's success depends upon the combined efforts of employees at the park, region, and WASO levels. Each level has specific responsibilities as outlined in this RM. The organization of the Program generally follows the organization of the Service.

2.5 Program Ethics

All federal employees within CS must ensure his or her actions are beyond reproach. The DOI requires all employees to complete annual ethics training. All employees must avoid the appearance of impropriety, which may present special challenges to the Program given its need to regulate commercial operators, often while living within the same community as the operators. This section highlights frequent issues specific to Program employees and provides tips for avoiding unethical situations.

Listed below are some of the more common ethical issues a concessions management specialist may encounter, including the citation for the Standards of Ethical Conduct. CS employees must follow not only these ethical requirements, but all government ethics standards as a requirement of his or her employment. These do not include ethics requirements and restrictions related to Federal Acquisition Regulation (FAR) contracts. For more detailed information on ethics, visit the DOI Ethics website.

Note: Employees with specific issues must consult with the appropriate ethics advisor.

2.5.1 Bribery – 18 U.S.C. 201

Criminal statutes prohibit seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act.

2.5.2 Gifts from Outside Sources – Subpart B, 5 C.F.R 2635

Federal employees may not solicit or accept gifts from prohibited sources. Prohibited sources include:

- Any person who has done or is seeking to do business with the NPS.
- Any person who conducts operations regulated by the NPS.
- Any person whose interests may be affected by the employee's official duties.
- Any organization with most of its members representing prohibited sources.

NOTE: Concessioners are prohibited sources!

Although an exception to this rule allows federal employees to accept gifts of nominal value in any year, a better practice would be to avoid the appearance of impropriety by refusing even a small gift.

2.5.3 Conflicting Financial Interests – Subpart D, 5 CFR 2635

Government employees may not participate in an official government capacity in any matter in which they have financial interests.

2.5.4 Use of Official Position – Subpart G

An Employee may not use his or her office for public gain to:

- Induce or coerce benefits to the employees or another person.
- Give the appearance of governmental sanction.
- Endorse any product, service, or enterprise.
- Protected Information Unique to the Program

[See FOIA, Section 1.6]

We consider many NPS work products, deliverables from contractors, and written submittals from concessioners and offerors for contracts protected information. Sometimes, only parts of such documents contain protected information. Examples of such information include:

- The evaluation panel process and the panel report.
- Information contained within the proposals.
- Information contained within AFRs, AORs, and environmental audits.
- Information collected and analyzed during prospectus development.
- Franchise Fee Analyses.

2.6 Freedom of Information Act Policies and Procedures

The FOIA provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are exempt from disclosure as provided by FOIA. A person may make a FOIA request for any agency record. See the DOI's FOIA website for a thorough discussion of FOIA and DOI procedures and regulations. The DOI Handbook available on that website contains definitions for terms used below.

Each NPS region has a FOIA officer to provide assistance and guidance.

2.6.1 General Program Documents

The Program has posted many documents on its public website. All documents on the public website are available to anyone who requests them. Program employees should direct requesters to this website.

2.6.2 Proposal and Evaluation Documents

Generally, we release only small parts of proposal and evaluation documents relying on FOIA Exemptions 4 and 5.

(See Chapter 5 for additional information on proposals and evaluations)

2.6.3 Concessioner Financial Information

Most concessioner financial information is protected under FOIA Exemption 4. We consider FOIA requests for concessioner financial information on a case-by-case basis. The Program does

not release AFRs under FOIA because it considers them “commercial or financial information obtained from a person” that is “privileged or confidential.”

(See Chapter 10 for additional information on financial reporting)

2.6.4 Concessioner Records and Correspondence

The Program maintains concessioner records and correspondence at the park, region, and WASO levels. These records include concession contracts, concessioner evaluations [including periodic evaluations and Annual Overall Ratings (AORs)], and correspondence. The Program may release most of these documents upon request, but FOIA exemptions 4, 5, and 6 may protect part or all of some documents. Occasionally, parks have concessioner personnel records that may contain personally identifiable information that requires special care (e.g., Social Security numbers).

2.7 Administrative Record/Record Retention

All federal agencies must create, file, and retain federal records according to agency schedules. NPS employees complete annual mandatory training on preservation of federal records.

The Program follows guidance as outlined in DO-11D: NPS Records Management and the Service-wide Records Schedule, especially item 5, Commercial Visitor Services.

Parks may develop their own document filing system based on the particular park administrative organization, types and numbers of concession contracts and other factors provided that they are in compliance with DO-11D. See the NPS Commercial Services Concession Specialist Toolkit on the Program’s SharePoint [site](#) for guidance on the development and maintenance of a document control system.

2.8 Delegations of Authority

Various delegations of authority for the Program are established for the development and approval of prospectuses for concession contracts as well as asset, financial and operational management of these contracts. These reflect those contained in the Director’s Memorandum of August 2, 2012, with several minor updates.

All contract and contract management actions must comply with legal and regulatory requirements and substantially comply with established Servicewide concession contracting and management procedures and standard contract language. The official responsible must assure that these requirements have been met.

Only the director, deputy director, operations, or the associate director of business services, may approve policy deviations. For approval of waivers of policy requirements contained in NPS Management Policies 2006, only the Secretary, Assistant Secretary for Fish and Wildlife and Parks (FWP), or Director may waive those requirements.

Notwithstanding any delegations listed in this section of the CS Guide, on issues of particular sensitivity, park management, regional staff, and the WASO Program Office, should undertake timely and meaningful consultation before committing to a specific course of action.

2.8.1 Regulatory Limitations on Delegations

The CS regulations at 36 CFR Part 51 place specific limitations on delegation authority for the actions listed below.

2.8.1.1 Award of Contracts of Over \$5 Million per Year or 10 Years in Duration

36 CFR § 51.22 provides that only the Director may approve the award of concession contracts with anticipated annual gross receipts in excess of \$5 million or with terms of more than 10 years in duration and may not delegate this approval authority except to a Deputy Director or an Associate Director to a Deputy Director or an Associate Director.

2.8.1.2 Non-Competitive Award of a Temporary Contract to Avoid Interruption of Visitor Services

36 CFR § 51.24(b) provides that the Director must personally approve the non-competitive award of a temporary contract to replace a contract in effect as of November 13, 1998, and had been extended as of that date or was due to expire by December 31, 1998.

2.8.1.3 Non-Competitive Award of a Contract to a Particular Person under Extraordinary Circumstances (“Sole Source” Contracts)

36 CFR § 51.25 restricts the non-competitive award of a concession contract to the Director upon a determination that extraordinary circumstances exist under which compelling and equitable considerations require the award of the contract to a particular qualified person in the public interest. The prior written approval of the Secretary is required for this action.

2.8.1.4 Determination of Outfitter and Guide Contract

36 CFR § 51.43 provides that only a Deputy Director or an Associate Director may determine whether a concession contract is or is not an outfitter and guide contract.

2.8.1.5 Appeal Regarding Whether a Concessioner is a Preferred Offeror for Right of Preference in Renewal

Under 36 CFR § 51.47, only the Director, Deputy Director, or Associate Director may consider an appeal as to whether a concessioner is or is not a preferred offeror for the right of preference to a new concession contract including whether a new concession contract is or is not a qualified concession contract.

2.8.1.6 Appeal to Director

The definition of “Director” in 36 CFR § 51.3 provides, in circumstances where the regulations call for an appeal to the Director, an official of higher authority than the official that made the disputed decision must consider the appeal.

2.8.2 Policy Delegations of Authority for Concession Contract Actions

Policy delegations for Program contracting actions augment those established by CS regulations. These are listed below.

2.8.2.1 Prospectuses¹

Prospectuses for Contracts of \$5 Million or More per Year OR More than 10 Years in Duration Only the director, deputy director, operations, or the associate director of business services, may approve prospectuses for concession contracts with anticipated annual gross receipts of \$5 million or more in the first year of stabilized operations or with terms of more than 10 years.

¹ See also Section D.3.a) below with respect to PI value or LSI value estimates to be included in a prospectus.

Prospectuses for Contracts of Less Than \$5 Million per Year AND 10 Years or Less in

Duration A regional director must approve prospectuses for concession contracts in any category with anticipated annual gross receipts of less than \$5 million in the first year of stabilized operations and terms of 10 years or less, with no further delegation authorized. NOTE: A regional director must receive written approval from the WASO CS Chief if the region determines a term of less than 10 years is appropriate for a concession contract.

Extension, Amendment, or Cancellation of a Prospectus The authority to extend a prospectus is with the regional directors with prompt notification to the WASO CS Chief. The authority to amend or cancel a prospectus is the same as the approval authority set out above.

2.8.2.2 Deviations from Standard Contract Language

Only the director, deputy director, operations, or the associate director of business services, may approve any deviation from approved standard contract language. This requirement applies to the draft contract in prospectuses and all amendments subsequent to the award of a contract.

2.8.2.3 Selection, Award, Amendment and Termination of Contracts

Amendment or Termination of 1965 Act Contracts Only the director, deputy director, operations, or the associate director of business services, may approve the amendment or termination of contracts and permits issued under the 1965 Act.

1998 Act Contracts of \$5 Million or More per Year OR More than 10 Years in Duration

Only the director, deputy director, operations, or the associate director of business services, may approve the selection of the offeror, award, or termination of contracts with anticipated annual gross receipts of \$5 million or more in the first year of stabilized operations, or with terms of more than 10 years, regardless of category. After award, regional directors may approve an amendment of these contracts EXCEPT for amendments to change standard contract language, to convert a contract from one category to another, to change franchise fees, and all amendments proposed AFTER the original contract term has expired and the contract is under an extension.

1998 Act Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration

Regional directors may approve the selection of the offeror, award, amendment (other than extensions) or termination of contracts with annual gross receipts of less than \$5 million in the first year of stabilized operations AND with terms of 10 years or less, with no further delegation authorized. Notwithstanding the foregoing, only the director, deputy director, operations, or the associate director of business services, may approve amendments to change standard contract language, to convert a contract from one category to another, to change franchise fees, and all amendments proposed AFTER the original contract term has expired and the contract is under an extension.

Temporary Contracts Except for a temporary contract to replace a contract in effect as of November 13, 1998, that had been extended as of that date or was due to expire by December 31, 1998, which only the Director may approve, the director, deputy director, operations, or the associate director of business services may approve the award of a non-competitive temporary concession contract. Once awarded, future contract actions are delegated as set out in paragraphs C.3.b) or C.3.c) above.

Non-Competitive (“Sole-Source”) Contracts Only the Director, with the prior written approval of the Secretary, may approve the award of a non-competitive “sole source” concession contract pursuant to 36 CFR § 51.25.

2.8.2.4 Extensions or Continuations

Extensions for All Categories of Contracts Only the director, deputy director, operations, or the associate director of business services, may approve extensions for all categories of contracts.

Continuation of Services Pursuant to Contracts Issued Under the Authority of the 1965 Act For those contracts issued under the 1965 Act and already extended to the maximum allowable under 36 CFR §51.23, only the director, deputy director, operations, or the associate director of business services, may approve continuations of visitor services under the terms and conditions of the contract.

2.8.2.5 Assignments and Encumbrances

Assignments Contracts of \$5 Million or More per Year OR More than 10 Years in Duration. Only the director, deputy director, operations, or the associate director of business services, may approve the assignment (i.e., transfer) of any contract (or of certain rights or ownership interests thereunder, as listed below) with gross receipts of \$5 million or more or a term of more than 10 years:

Any right to operate under or manage the performance of a concession contract as a sub-concessioner or otherwise.

Any controlling interest in a concessioner (e.g., the sale by the holder of 51 percent of the stock of a corporate concessioner). Any question concerning what may constitute a controlling interest, especially with respect to a partnership or limited liability company, should be referred to the Office of the Solicitor.

Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration. A regional director may approve the assignment (i.e., transfer) of contracts (or of certain rights or ownership interests thereunder, as listed below) with gross receipts of less than \$5 million and terms of 10 years or less with no further delegation authorized:

Any right to operate under or manage the performance of a concession contract as a sub-concessioner or otherwise.

Any controlling interest in a concessioner (e.g., the sale by the holder of 51 percent of the stock of a corporate concessioner). Any question concerning what may constitute a controlling interest, especially with respect to a partnership or limited liability company, should be referred to the Office of the Solicitor.

Encumbrances Only the director, deputy director, operations, or the associate director of business services, may approve an encumbrance (i.e., a pledge to secure a loan) of a concession contract, leasehold surrender interest, PI, or any rights under the contract.

2.8.2.6 Franchise Fees

Franchise Fee Modifications Only the director, deputy director, operations, or the associate director of business services, may approve the modification of a franchise fee.

Waivers of Franchise Fees The Director may not waive payment of a concessioner's franchise fee or other payments or consideration required by a concession contract, except that the Director may waive a franchise fee in part pursuant to administrative guidelines that may allow for a partial waiver in recognition of exceptional performance under the terms of a concession contract. (36 CFR §51.79) As of the date of this memorandum, however, no such administrative guidelines exist to authorize partial waivers.

Franchise Fees of One Percent (1%) or Less For all prospectuses that propose a minimum franchise fee of 1% or less, a regional director must obtain the concurrence of the WASO CS Chief that such a fee is appropriate.

2.8.2.7 Preferred Offeror Determinations or Appeals

Determinations If a new contract has projected annual gross receipts of less than \$500,000 in the first year of stabilized operations, a regional director may determine whether a concessioner

is a preferred offeror, with no further delegation authorized (see Part B.4. above, however, regarding the determination whether a contract is or is not an outfitter and guide contract).

Appeal Regarding Whether a Concessioner is a Preferred Offeror for Right of Preference in Renewal

Only the director, deputy director, operations, or the associate director of business services, may consider an appeal by any person that a concessioner is or is not a preferred offeror for the right of preference in renewal, including, without limitation, whether a new concession contract is or is not a qualified concession contract.

Appeal by a Concessioner under 1965 Act Contract for Recognition of Renewal Preference

Only the director, deputy director, operations, or the associate director of business services, may consider the appeal of a concessioner who holds an existing 1965 Act concession contract that makes express reference to a renewal preference for recognition of a renewal preference.

2.8.2.8 Convening Evaluation Panels

Contracts of \$5 Million or More per Year OR More than 10 Years in Duration Regional directors convene panels to evaluate prospectus proposals for concession contracts with anticipated annual gross receipts of \$5 million or more in the first year of stabilized operations, or with terms of more than 10 years, with no further delegation authorized. A regional director, however, must submit a list of prospective panel members, including the proposed panel chairperson in a timely manner to the WASO CS Chief for review and approval prior to the prospectus closing date. Consultation may occur to determine the skills and expertise necessary for panel members and to ensure a fair and objective panel review.

Contracts of Less Than \$5 Million per Year AND 10 Years or Less in Duration Regional directors convene panels to evaluate prospectus proposals for concession contracts with anticipated annual gross receipts of less than \$5 million in the first year of stabilized operations, and with terms of 10 years or less, with no further delegation authorized.

2.8.2.9 Converting a Concession Contract or a CUA to a Lease

On May 29, 2007, the “Authorizing Activities through Leases Versus Concession Contracts or CUAs” memorandum established the procedures for converting a concession contract or a CUA to a lease.

2.8.3 Policy Delegations of Authority for Asset Management and Value Determinations

Policy delegations for Program asset management actions augment those established by CS regulations. These are listed below.

2.8.3.1 Approval of Prospectus Related Condition Assessment Waivers

The Chief, Commercial Services, may approve prospectus related condition assessment (CA) waivers.

2.8.3.2 Concessioner Funded Capital Improvement Projects

Approval of Projects by the Development Advisory Board (DAB) Prior to submitting any project to the director or regional director for approval, a project must have completed all required processes and received approval by the DAB.

New Structures and Additions to Structures Only the Director may approve concessioner funded construction of new structures and additions to structures, regardless of cost.

Major Rehabilitations Only the Director may approve concessioner funded major rehabilitations of \$1 million or more. A regional director may approve concessioner funded major rehabilitations of less than \$1 million, with no further delegation authorized.

Cost Variances of 10 Percent or Greater Only the Director may approve cost variances of 10 percent or greater of the total approved cost for construction of a new structure or addition or major rehabilitation of an existing structure costing \$1 million or more and cost variances that move a major rehabilitation from less than \$1 million to greater than \$1 million. A regional director may approve cost variances of 10 percent or greater for major rehabilitations costing less than \$1 million, with no further delegation authorized.

Replacement of Fixtures Park superintendents may approve fixture replacements, regardless of cost, prior to replacement of the fixture. The Superintendent must forward to WASO (through the regional director) the Annual Fixture Replacement Report (FRR) and Certified Public Accountant (CPA) certification submitted by the concessioner.

2.8.3.3 PI Value or LSI Value

Regional directors may approve all estimates of PI or LSI value of less than \$1 million to be included in a prospectus for a new concession contract, with no further delegation authorized. Regional directors must obtain the concurrence of the director, deputy director, operations, or the associate director of business services, for PI or LSI values of \$1 million or more to be included in a prospectus for a new concession contract.

Negotiations of PI or LSI Values

Agreement to Negotiate. Regional directors may approve agreements to negotiate PI or LSI values estimated to be less than \$1 million. Regional directors must obtain the concurrence of the director, deputy director, operations, or the associate director of business services, with agreements to negotiate estimated PI or LSI values of \$1 million or more.

Initial NPS Value Position. Regional directors, with concurrence of the WASO CS Chief, may approve all initial NPS PI or LSI value negotiating positions less than \$1 million. Regional directors must obtain the concurrence of the director, deputy director, operations, or the associate director of business services, for all initial NPS PI or LSI value negotiating positions of \$1 million or more.

Negotiating Team. Regional directors may designate the negotiating team for concession contracts with an estimated PI or LSI values of less than \$1 million. Regional directors must obtain the concurrence of the director, deputy director, operations, or the associate director of business services, for all negotiating teams for concession contracts with an estimated PI or LSI values of \$1 million or more.

Proposed Value Agreement. Regional directors, with concurrence of the WASO CS Chief, may approve any proposed PI value or LSI value between the NPS and a concessioner for values less than \$1 million. Regional directors must obtain the approval of the director, deputy director, operations, or the associate director of business services, of any proposed PI or LSI value agreement between the NPS and a concessioner with an estimated value of \$1 million or more.

Arbitration

Arbitration Procedures Agreements. Regional directors, with concurrence of the WASO CS Chief and Office of the Solicitor, must approve all arbitration procedure agreements for arbitration of PI or LSI value, subject to the final approval of the director, deputy director, operations, or the associate director of business services.

Initial NPS Value Position. Prior to its submission in the arbitration process, regional directors, with concurrence of the WASO CS Chief and the final approval of the director, deputy director, operations, or the associate director of business services, must approve initial NPS value positions.

2.8.4 Policy Delegations of Authority for Contract Management

Policy delegations for Program contract management actions augment those established by CS regulations. These are listed below.

2.8.4.1 Annual Performance Evaluation

Park superintendents must conduct annual evaluations of concessioner performance to determine if the concessioner operated satisfactorily for the evaluation period and must assign an AOR.

2.8.4.2 Concession Rate Approval

Park superintendents must approve rates for concession visitor services based on a determination that they are reasonable and appropriate.

2.8.4.3 Operating and Maintenance Requirements

Park superintendents may modify the requirements of the concession contract operating and maintenance plan to address procedural changes necessary to protect, conserve and preserve the park area resources and provide proper safeguards in the provision of the contracted visitor services. These modifications may not fundamentally change the terms of the contract. These changes may be unilaterally implemented for 1998 Act Contracts but require concessioner concurrence for 1965 Act contracts.

2.8.5 CS Management Delegations

Delegation for Management of Regional Concession Contracting Programs Each regional director must designate, by formal delegation, the Regional Chief of Commercial Services within his or her respective regional directorate to manage the regional concession program. This official must approve each contracting action.

Delegation for Management of Park Concession Contracting Programs The superintendent may designate park personnel to manage the park concession program. However, the superintendent may not delegate the concession contracting and management responsibilities given them as described above.

Chapter 3: Planning

3.1 Introduction

Planning for CS guides and directs the establishment and administration of commercial visitor services and facilities within a park. NPS Management Policies 2006, Section 10.2.2 directs the NPS to integrate planning for commercial services into other plans and planning processes. Planning for commercial services follows the policy and guidelines as other planning in the Service. Planning is a complex process for which the NPS has developed extensive expertise and guidance.

(See NPS Management Policies 2006, Chapters 2 and 8 for details and nuances of the planning processes)

This chapter describes the two types of commercial services plans (CSPs) that build upon NPS planning policies to define commercial service opportunities in parks – commercial services strategy (CSS) and CSP.

Several DO's and related reference manual's provide detailed guidance for various aspects of the planning process, including:

- ◆ DO-12: Environmental Impact Analysis
- ◆ DO-28: Cultural Resources Management
- ◆ DO-32: Cooperating Associations
- ◆ DO-53: Special Park Uses
- ◆ DO-75A: Civic Engagement and Public Involvement
- ◆ RM-77: Natural Resource Management

These sources, especially DO-12 and its RM, explain many of the terms used in this chapter. All DOs are located at the [NPS Office of Policy](#) website.

3.2 NPS Planning Overview

The park, region, WASO and concessioner each have roles in the planning process to ensure the sound development of concession services in parks.

3.2.1 Park

In the NPS, an interdisciplinary team (consisting of park managers and technical experts) leads most planning efforts. Superintendents should invite a representative of the park's commercial services employees to participate in planning efforts as a member of the interdisciplinary team when appropriate.

3.2.2 Region

The regional office's role in concession planning will vary according to the size and employee capability of the park. Typically, regional employees will serve in an advisory role. The regional employees, however, may prepare and conduct commercial services strategies or may secure assistance from special programs, such as the [Business Plan Internship](#), or outside consultants.

3.2.3 Washington Area Support Office

The Program provides policy and procedural guidance for commercial services planning.

3.2.4 Concessioner Participation in Planning

The Service should seek input and advice from existing concessioners as part of a scoping process, including obtaining operating and other data. For all plans that may affect existing or future commercial operations, planners must have information about financial consequences of the various alternatives considered. This is especially important when the plan primarily focuses on changing existing commercial visitor services or implementing new ones as all concession contracts must provide a reasonable opportunity for a net profit based on the concessioner's investment and requirements of the contract. Without understanding these aspects during the planning process, the NPS may decide to take a course of action that results in unviable concession contracts.

As part of the scoping process, the NPS may discuss with concessioners (as it would others operating in the park) potential consequences of possible changes to help determine consequential effects and to explore alternatives for mitigation of adverse effects. Concessioners may not serve on the interdisciplinary team nor unduly influence the decision-making process.

3.3 Types of Commercial Services Planning Documents

NPS Management Policies 2006, Section 10.2.2 requires parks have a CSS in place to ensure concession facilities and services are necessary and appropriate, financially viable, and addressed in an approved management plan. Two types of commercial services planning documents provide the framework for decision-making.

3.3.1 Commercial Services Strategy

The NPS develops a CSS to determine whether approved management plans address existing or new services, including potential new facilities. A CSS is not an implementation plan, but rather evaluates existing implementation plans to determine whether authority exists to provide a given commercial visitor service. This process consists of reviewing and evaluating current approved management plans to determine whether the proposed commercial visitor services comply with existing planning decisions. To the extent the approved plans do not support providing certain services, the NPS either must not pursue those services or complete additional planning to support a decision to provide them. The CSS also provides an opportunity for focused market research for potential new services or additional contracts or CUA's for existing services. Ideally, a CSS includes public engagement and comment.

Park employees usually develop a CSS and should consult with the regional office during the development of the CSS. The regional office should inform the WASO Program of the CSS. The WASO Program maintains an archive of existing CSS documents.

The WASO Program has a sample work plan for conducting a CSS and examples of existing CSS's.

3.3.1.1 Approval Authority

Superintendents recommend CSS for approval by the regional director.

3.3.2 Commercial Services Plan

A CSP is an implementation plan that provides direction to park management on commercial services for the period of planning, usually 10 to 20 years. The NPS may develop a CSP to cover gaps revealed by a CSS or to implement that strategy when appropriate. When commencing the general management planning process or creating foundation documents, the scope for that project should include commercial visitor services. When undertaking other planning processes, especially those involving visitor use and management, the scope should include commercial visitor services to avoid needing a separate CSP. Before undertaking a planning process covering only commercial services, the Service should consider amending other existing plans.

The CSP typically will have a National Environmental Policy Act (NEPA) process (either an environmental assessment or an environmental impact statement) with public involvement and a range of alternatives including financial feasibility analysis. Such plan will result either in a finding of no significant impact (FONSI) or record of decision (ROD) documenting the agency's final plan. Although a planning process includes an iterative process where the NPS develops and considers a variety of alternatives, a final CSP should consider only those alternatives proposing operations that provide future operators a financially viable business opportunity.

3.3.2.1 Approval Authority

Superintendents recommend CSPs for approval by the regional director.

3.4 Primary Planning Considerations

The following criteria affect planning for commercial services:

- ◆ Necessary and appropriate determination.
- ◆ Financial viability.
- ◆ Preservation and conservation of park resources and values.
- ◆ Visitor use and enjoyment.

A commercial services planning effort should require consideration of all of the above factors. If the planning determines an operation is not necessary or appropriate, or not financially viable, the NPS need not consider the other items.

3.4.1 Necessary and Appropriate Determination

The 1998 Act limits the development of public accommodations, facilities, and services to those *necessary and appropriate* for public use and enjoyment of the unit of the National Park System and *consistent to the highest practicable degree* with the preservation and conservation of the resources and values of that unit.

The determination of whether commercial visitor services are necessary and appropriate varies from park to park. The NPS considers whether an activity is necessary and appropriate using unique information such as enabling legislation, environmental issues, local market conditions, and area visitation. The determination that a service is necessary and appropriate may change over time. An operation once considered necessary for visitor enjoyment can become redundant because of the availability of similar out-of-park services. Likewise, an operation once considered appropriate might become a threat to park resources.

The uniqueness of each park precludes the development of a textbook definition of necessary and appropriate to fit every situation, but the NPS uses the following criteria to guide the development of specific criteria for each park:

- ◆ **Appropriate** – Answers the question, “Can the NPS authorize this commercial service without compromising the reasons the park was established?” The idea that a service must be compatible with the purpose of the established area is derived directly from the Organic Act.

(See NPS Management Policies 2006, especially Chapter 8 on Use of the Parks. Also see DO-53: Special Park Uses for additional guidance)

An appropriate commercial visitor service accomplishes **all** of the following:

- Consistent with the park purpose and significance.
 - Consistent with laws, regulations, and policies.
 - Does not compromise public health and safety.
 - Does not cause unacceptable impacts to park resources or values.
 - Does not unduly conflict with other park uses and activities.
 - Does not exclude the general public from participating in limited recreational opportunities.
- ◆ **Necessary** – Answers the question, “Why is this service important for this park?” A necessary service accomplishes **one or more** of the following:
 - Contributes to visitor understanding and appreciation of a park’s purpose and significance.
 - Enhances visitor experiences consistent with the park’s purpose and significance.
 - Assists the NPS in managing visitor use and educating park visitors.
 - Provides an essential service or facility not available within a reasonable distance from the park.

3.4.1.1 Necessary and Appropriate Determination for an Existing Service

A necessary and appropriate determination for an existing service documents the NPS consideration and determination to continue providing the service. The project team creates determination early in the process of developing a new prospectus for the concession contract. The determination requires a documented categorical exclusion. See DO-12 and its accompanying RM for additional information.

3.4.1.2 Necessary and Appropriate Determination for a New Service

A necessary and appropriate determination for a new service documents the decision to authorize a new commercial visitor service. Typically, this determination would result from the development of a CSS or CSP.

3.4.1.3 Approval Authority

Superintendents approve necessary and appropriate determinations for existing services. Park employees should document this decision with a memorandum from the superintendent to the regional director communicating the decision.

Regional directors approve necessary and appropriate determinations for new commercial visitor services or new concession facilities as part of the approval process for a CSS or CSP. When the NPS considers discontinuing an existing service, park and regional employees should consult carefully with planning experts and the Office of the Solicitor to determine whether such a decision requires additional planning, and if so, the extent of such planning.

3.4.2 Financial Feasibility Analysis

Section 407 of the 1998 Act requires the NPS to provide concessioners a reasonable opportunity for net profit in relation to capital investment and the obligations of the contract. NPS Management Policies 2006, Section 10.2.2 requires the NPS to ensure concession facilities and services are financially viable. The financial viability of a contract ensures the concessioner can provide an acceptable level of service to the public, meet contractual obligations for protecting resources, maintain facilities, follow operational requirements, make a return on its investment, and provide a return to the government.

During the planning process, the NPS must conduct a financial viability analysis of proposed new services as well as existing services. Such analysis should mirror the process discussed in Chapter 4. The NPS should not consider alternatives that are not financially viable.

3.4.3 Preservation and Conservation of Park Resources and Values

The Organic Act defines the two-part fundamental purpose of the NPS. One part is the preservation and conservation of park resources and values, which the 1998 Act reiterated by allowing only those public accommodations, facilities, and services necessary and appropriate for public use and enjoyment and consistent with the highest practicable degree with the preservation and conservation of park resources and value. When developing alternatives to consider in planning for commercial services, the NPS must keep this mandate in mind.

(See NPS Management Policies 2006, Chapters 4, 5, and 6 for additional direction on the Service's many planning guidance and policies)

The other fundamental purpose of the NPS is providing for visitor use and enjoyment of park resources and values. This generally requires the NPS to consider visitor use management as defined in NPS Management Policies 2006, Section 8.2.1. Through this process, the NPS considers the type and level of visitor use it can accommodate while sustaining desired resource and visitor experience conditions in a park. Parks typically have many plans guiding how to protect park resources and values while allowing visitor enjoyment of those resources and values. When considering whether to continue existing services or authorizing new ones, park management must check existing plans or develop additional ones to understand how to meet this dual mandate.

When developing concession contract documents, the NPS must consider where the commercial services will occur and include use limits or management controls as necessary to protect resources and enhance visitor experiences.

3.5 Other Planning Considerations

NPS Management Policies 2006, Chapter 2 describes the many requirements the NPS follows that affect commercial services planning.

3.5.1 Sustainable Design and Practices

In accordance with NPS Management Policies 2006, Chapter 10, decisions to authorize or expand concession facilities include a determination that the facility incorporates sustainable design principles and practices in planning, design, siting, construction, and maintenance. In addition, plans must adopt appropriate energy and water conservation methods, source reduction, and environmental purchasing standards and goals.

3.5.1.1 Executive Orders

Planning for commercial services must include strategies to support the established goals and objectives for sustainable design and practices for federal agencies including [Executive Order 13693, Planning for Federal Sustainability in the Next Decade](#).

E.O. 13514 and 13423 establish an integrated strategy to improve sustainability in the federal government and outline environmental performance requirements in the following areas:

- ◆ Accountability and transparency
- ◆ Strategic sustainability performance planning
- ◆ Greenhouse gas management
- ◆ Sustainable buildings
- ◆ Energy and water efficiency
- ◆ Environmentally preferable purchasing
- ◆ Electronic products and services
- ◆ Fleet and transportation management
- ◆ Pollution prevention and waste reduction

3.5.1.2 NPS Green Parks Plan

Commercial services planning must consider strategies to achieve the operational environmental stewardship objectives presented in the [2012 Green Parks Plan](#) (GPP). The GPP formalized the Service's approach to sustainable operations including those to meet goals and objectives in E.O.'s, departmental policies and plans, and Management Policies.

These performance standards in the GPP directly apply to the NPS when planning for commercial services, including design and construction. The standards also apply to concessioner facility operations (FO) and practices.

3.5.2 Randolph-Sheppard Act

The Randolph-Sheppard Act ("R-S Act") (20 U.S.C. §107 *et seq.*) authorized the vending facility program that provides, through state rehabilitative agencies, persons who are blind with

remunerative employment and self-support through the operation of vending facilities on federal and other property. The U.S. Department of Education implements the R-S Act and has adopted regulations at 34 CFR Part 395 for the program. The DOI has adopted regulations at 43 CFR Part 13 setting the policies and procedures DOI bureaus for compliance with the R-S Act. Generally, vending operations that provide services directly to park visitors (rather than federal employees) would operate under a concession contract rather than an R-S Act permit. If you receive a request from a state rehabilitation agency to convert a concession operation to one authorized by the R-S Act, you should immediately contact your Regional Chief.

The R-S Act regulations exempt visitor accommodations, facilities, or services in areas administered by the NPS on two bases: (1) the manner in which the visitor services are operated, **or** (2) the scope or character of the visitor services involved.

1. **Manner in which the Visitor Services Are Operated** – The priority requirements do not apply when visitor services are operated by a single responsible concessioner in a unit of the National Park System.
2. **Scope or Character of the Visitor Services** – The priority requirements do not apply when visitor services are “of a scope or of a character not generally available in vending facilities operated by blind vendors.” Examples include a concessioner whose restaurant provides table service or whose operations include services beyond vending, such as lodging.

Nothing prevents a vendor covered by this law from submitting a proposal for a concession contract. If the Service selects that offeror, no terms or conditions in the concession contract would change based on the vendor’s status.

3.5.3 Cooperating Associations

Cooperating associations have a long-standing and significant relationship with the Service reflected primarily in the support of the educational, scientific, historical, and interpretive activities of the Service through the provision of educational products and services to national park visitors through retail sales. Frequently, both concessioners and cooperating associations provide retail sales within the same park. At all times, the quality of visitor services remains a paramount consideration. Park employees should work with concessioners and cooperating associations to identify opportunities to work collaboratively, such as wholesaling interpretive sales items to concessioners, joint training, and co-sponsoring projects to improve visitor services. Park employees must manage the operations and potential conflicts with the following in mind:

- ◆ The Service issues a prospectus for a new concession contract after concluding the contract will provide the new concessioner a reasonable opportunity for net profit in relation to the capital invested and the obligations of a contract. Once the Service awards a contract to a concessioner who relied on the opportunity described in the prospectus, the Service avoids undermining or lessening that opportunity while still ensuring the preservation and conservation of the resources and values of the park.

- ◆ The Service promotes sustainable business environments for cooperating associations by:
 - Providing reasonably stable and reliable conditions in which the cooperating associations operate; regularly and timely communicating to cooperating associations operating plans that may affect operations.
 - Encouraging innovation and new product lines within the cooperating association's scope of sales that support the park's interpretive mission.
 - Streamlining processes.
 - Remaining sensitive to sound association business practices.
- ◆ Superintendents, with assistance from concessions personnel and association coordinators, must monitor the activities of cooperating associations and concessioners to encourage cooperation and keep potential conflicts to a minimum.

3.5.3.1 Visitor Convenience Items

Visitor convenience items are items that are necessary for the comfort and convenience of visitors within the park. When the Service determines it necessary to sell such items and concessioners are not providing these items, the Service may allow cooperating associations to sell visitor convenience items. In many cases, the sales of such items generate low revenue, thus allowing the use of a CUA rather than a concession contract to authorize such sales. When the volume of such sales requires the award of a concession contract, however, the sale of visitor convenience items falls within the purview of the 1998 Act, and the Service must authorize and manage such operations in the same manner as other concession contracts.

Typically, the Service authorizes cooperating associations to sell visitor convenience items when:

- ◆ No concessioner provides retail operations in the park.
- ◆ A concessioner providing retail operations closes for the season.
- ◆ When both the cooperating association and concessioner are operating, the concession operations occur at a substantial distance from the cooperating association retail location.

Except when the Service has a compatible sales agreement with the concessioner and the cooperating association, a concessioner and a cooperating association may not have duplicative, competing operations in the same building.

Examples of visitor convenience items include:

- ◆ Hot and cold nonalcoholic beverages.
- ◆ Feminine hygiene products.
- ◆ Over the counter pain relief medications and antacids.
- ◆ Insect repellent.
- ◆ Sun protection items.
- ◆ Emergency fuel for campground use.
- ◆ Items to support photography such as batteries and memory cards.
- ◆ Postage stamps.
- ◆ Electric vehicle charging stations.

Park employees should make decisions and articulate in the operating plan the types of visitor convenience items permitted for sale under this type of concession contract.

Chapter 4: Prospectus Development

4.1 Introduction

This chapter describes the prospectus development process. Through the prospectus development process, we seek contracts that:

- ◆ Provide necessary and appropriate commercial visitor services.
- ◆ Are consistent to the highest practicable degree with the preservation and conservation of park resources and values.
- ◆ Provide a concessioner a reasonable opportunity for a net profit.

The process requires an investment of time and resources to collect and analyze all relevant data and to understand and mitigate risks and concerns. One primary goal of the Program is to develop new prospectuses in time to ensure the award of a new concession contract when the original term of the prior contract ends.

The prospectus development process involves three main phases as described in this chapter. Those steps are Planning and Project Strategy Development; Scenario Research, Analysis, and Decision; and Prospectus Development and Review. The work accomplished at each step forms the foundation for the subsequent steps in the process and ultimately, the next contract.

4.2 Phase 1: Planning and Project Strategy Development

The planning, research, and analysis undertaken at this initial stage helps us develop a prospectus that articulates the business opportunity and complies with all legal, regulatory, and policy requirements. The WASO Program has tools to help with many of the processes described in this chapter.

At this stage, we collect information from internal and external sources and analyze that information to help decision-makers determine, among other things, the services to include in the new concession contract, whether to include construction or renovations of facilities, and the term of the new contract. Larger, more complex contracts typically require more time and effort for this initial planning stage, but small contracts frequently present complexities that require time and information to resolve.

4.2.1 Project Research and Data Collection

4.2.1.1 Project Team

At this step, we form the core project team to guide the entire prospectus development process. The project team typically consists of:

- ◆ The lead park concession specialist (referred to as the park field coordinator during prospectus development).
- ◆ Members of the park leadership team (e.g., superintendent, chief of interpretation, chief of maintenance, chief of concessions).
- ◆ The regional project manager, regional asset manager, and regional financial analyst.
- ◆ For WASO-level projects (see DO-48A), the WASO project manager, WASO asset management analyst, WASO financial analyst, and representative of the WASO contract management team.
- ◆ Indefinite delivery/indefinite quantity (IDIQ) consultants.

(See the section on IDIQ) in this chapter for additional information)

Throughout this process, other NPS employees, including park division managers, regional concession chiefs, regional director, and WASO Program branch chiefs, help with various aspects of the project. As necessary, the project team also includes regional and headquarters solicitors and the WASO CS program Chief. This is an internal process and does not include the incumbent concessioner or potential offerors, park partners such as a cooperating association or friends group, or other non-federal parties.

Some superintendents at larger parks will delegate the prospectus process to a deputy superintendent or other senior manager. In such instances, the project team will need to involve the superintendent at various points in the project to make or affirm key park decisions.

4.2.1.2 Information Research and Gathering

The project team researches and collects all relevant project information to support the project definition meeting and to draft the scope of services and the internal government estimate (IGE) when engaging a contractor.

Most information collected at this stage is confidential, proprietary information of the existing concessioner.

At this step, the park field coordinator and regional project manager:

- ◆ Compiles the existing concession contract and all amendments and assignment documents.
- ◆ Updates the existing concession contract to reflect changes and current operations (as necessary).
- ◆ Verifies the real property assets assigned to the concessioner.
- ◆ Requests a personal property inventory from the concessioner.
- ◆ Collects the concessioner's Annual Financial Reports (AFRs) for the most recent 10-year period.
- ◆ Locates all previously completed franchise fee analyses.
- ◆ Compiles park visitor satisfaction surveys.
- ◆ Collects park planning documents and related decisions that affect the existing and future concession operations.
- ◆ Collects monthly park visitation statistics for the past 10 years.
- ◆ Collects AORs for the concessioner for all years of the existing contract.
- ◆ Collects environmental audits performed during the term of the existing contract.
- ◆ Gathers information on in-park and nearby community planning and construction initiatives and trends in visitation data.
- ◆ Compiles information gathered during the term of the current concession contract about changes and additions to operations. This information may come from park employees, visitor comments, discussions with the incumbent concessioner, and other sources.

4.2.1.3 Required Memos for the Administrative Record

The park field coordinator prepares the following at this stage of prospectus development:

- ◆ Updated necessary and appropriate determination
- ◆ NEPA Categorical Exclusion
- ◆ Preferred offeror determination

The project team assists the park field coordinator if requested.

4.2.1.4 Applicability of Service Contract Act

During this stage, the project team must determine the applicability of the Service Contract Act (SCA) of 1965 (41 U.S.C. § 351) to the project.

(See the section on Components of the Baseline Buildup Report in this chapter for additional information)

4.2.1.5 Sustainable Design and Practice

The project team should consider sustainable design and practice during all phases of the prospectus development process, especially when considering whether to require capital improvements under the next concession contract. The [Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings Guidance](#) (guiding principles) affect capital improvements and include requirements for new construction, major renovations, and existing buildings.

The project team should review the guiding principles throughout the process to determine if and when the principles would apply to projects under the next concession contract.

The project team should consult the [NPS Guiding Principles of Sustainable Design](#) to determine the appropriate sustainability issues relevant to the concession operation. The project team also should review the concessioner environmental audit reports to identify additional sustainability issues.

4.2.2 Project Definition

During project definition, the project team begins to outline the facilities, operations, and services park management wants considered as part of the future concession contract. For example, maintaining the status quo, adding, or reducing services.

4.2.2.1 Project Definition Meeting

The regional project manager convenes a project definition meeting and invites the project team to review the current operations and the alternatives for future operations.

Developing a new prospectus takes time and requires many park-level decisions. The project team should involve all appropriate park-level management divisions in the process. The Project Definition meeting should occur in the park to help the project team members understand the purpose and mission of the park and the existing concession operations. At this stage, the park defines options it wants to consider in the next contract, such as new facilities, services, and restructured operations. Final decisions occur at the Scenario meeting during Phase 2.

Meeting participants must consider decisions related to the time frame of a project, the NPS resources available for the project, and future alternatives to determine how to prepare for those decisions. Topics must include:

- ◆ **Confidentiality** - All members of the project team and everyone else involved in discussions about the prospectus development process must sign a confidentiality agreement underscoring the importance of protecting proprietary information and keeping information about NPS decisions and directions confidential. Example agreements are available in the [Prospectus Development Toolbox](#) on the Program's SharePoint [site](#).
- ◆ **Time Frame** - Considering the concession operation and a standard prospectus development timeline, the project team develops a preliminary schedule including review

periods and release and awards dates. The meeting participants must consider the seasonality of the operation, appropriate dates for site visits, time necessary to transition from one contract to the next, NPS employee availability, expiration date of current contract, the various approval processes, including potential review by the DAB, and any other project-specific considerations. Decisions related to changes in future operations usually prolong a project's timeline and level of effort (e.g., planning requirement). For contracts with preferred offerors, the schedule must include time to comply with the requirement allowing the incumbent to meet the terms of a better offer.

- ◆ **NPS Resources** - The meeting participants discuss the availability of NPS resources to complete the project. For example, if sufficient employees are not available, the park may need to hire a concession specialist to perform the duties of park field coordinator, or the region may need to hire a project manager to perform the regional responsibilities. The project team should also consider the financial resources and constraints, including funding for contracted products and travel costs. If the project team is not using contractors for prospectus writing, a contract is still required for a CA and insurance exhibit.
- ◆ **Financial Considerations** - In preparation for the meeting, the regional or WASO financial analyst should prepare a summary of the AFRs submitted by the current concessioner and other relevant financial analyses.
- ◆ **Future Alternatives** - Future operations may change because of an ongoing planning process. If the current concession operation has limited financial viability, the project team may need to explore options like changing the assortment of services and facilities. Changing visitor demographics may also require consideration of new services.
- ◆ **Potential Pitfalls and Contingency Plans** - Meeting participants must identify potential pitfalls and develop contingency plans. For example, a project that goes forward with a new required service not previously vetted through a planning process should contemplate delays to complete the planning necessary to support including the service.

4.2.3 Roles, Responsibilities, and Timeline

The WASO Program developed a roles and responsibilities document that identifies the roles and responsibilities of all involved with prospectus development projects. The regional project manager should distribute this document at the project definition meeting and provide it to those who come into the project later. This document is available in the [Prospectus Development Toolbox](#) on the Program's SharePoint [site](#). The roles and responsibilities document:

- ◆ Outlines the prospectus development process.
- ◆ Communicates to leadership the time and resources needed to complete the project and develop the best concession opportunity.
- ◆ Outlines the roles and responsibilities for each project team member.
- ◆ Establishes a project timeline with goals.

At this stage, the regional project manager should have all project team members and other employees involved with the project sign a confidentiality agreement regarding the information collected and developed during the prospectus process. A template of that document is available in the [Prospectus Development Toolbox](#) on the Program's SharePoint [site](#).

4.2.4 Federal Acquisition Regulation Contracting Process

The Program uses FAR contracting to obtain professional consultants who provide business, hospitality, insurance, financial expertise, and architectural and engineering services to help us

develop a prospectus. The WASO Program has IDIQ contracts with consulting firms to provide this expertise. Parks fund prospectus development efforts, including, but not limited to, contractor support, employee travel, and panel costs.

Each project using an IDIQ consultant has one or two designated contracting officer representatives (COR) at either the WASO or regional level, one for prospectus development and one for the facility CA. The WASO Contracting Program provides the contracting officer (CO) for every project using the Program's IDIQ consultants.

Unless specifically waived by the associate director of business services, all WASO-level projects must use IDIQ contractors during prospectus development. Regional-level projects use these contracts when qualified NPS employees are not available to perform the tasks timely. For small concession contracts, however, the Program has a policy setting franchise fees based on the type of service and level of annual gross receipts. Using those guidelines obviates the need for a formal financial analysis. When an NPS financial analyst prepares a franchise fee analysis for any project, a financial analyst from another regional office or the WASO Program must review the document and provide comments for quality assurance.

(See Chapter 10 for additional information and guidance on this topic)

4.2.4.1 Developing the Scope of Services

The COR, along with the specific members of the project team, develops a scope of services (SOS) to define the services the consultants will provide to the NPS. The SOS contains a summary explanation of the project and provides an itemized list of specific tasks the contractor must perform to complete the project. The WASO Program maintains a standard SOS that includes the following tasks:

1. Project planning and due diligence.
2. Market analysis.
3. Rate comparability study.
4. Personal property valuation and replacement schedule.
5. Financial investment analysis and scenario meeting.
6. Initial prospectus development.
7. Round table meeting preparation and execution.
8. Preparation and delivery of final draft prospectus document.
9. Prospectus reproduction.
10. Panel support.

For projects requiring a real property CA, the project team will undertake a parallel contracting process for that report (explained in detail later in this chapter).

An SOS may designate some of the tasks as optional (typically tasks 3, 9, and 10 above) to allow the Service to decide later whether to use that assistance in those areas. The COR must include the optional tasks in the IGE of the projected costs of the project and the purchase request (PR) must obligate funds for these tasks.

4.2.4.2 Request for Proposals

The COR will prepare several documents for approval and use by the CO as required under FAR.

The Program has templates and other aids for creating these documents in the [Prospectus Development Toolbox](#) on the Program's SharePoint [site](#).

The COR works closely with the project manager and park field coordinator to develop the package for the request for proposal (RFP). The RFP package should consider specific project requirements, such as technical approaches specific to the complexity or remoteness of the park.

4.2.4.3 Solicitation

The CO prepares the RFP and solicits bids. The project team responds to questions from the IDIQ contractors about the RFP, amends the solicitation if necessary, evaluates the proposals, and makes an award recommendation to the CO based on the best value to the government.

4.2.4.4 Post Award

The CO awards the task order and the COR manages the contractor's performance. No project team member has authority to redirect the work of the contractor. Only the CO has the authority to implement such changes.

4.3 Phase 2: Scenario Research, Analysis and Decision

This section describes the process we use to conduct research and analysis to determine the details of the concession contract to be offered that supports planning and is feasible, realistic and meets park needs.

4.3.1 Due Diligence

At this point, the project team collects additional data and information needed to complete the prospectus development process. Due diligence often occurs during the initial site visit following award of the FAR contract.

The consultant or the NPS financial analyst interviews knowledgeable sources, including but not limited to the following:

- ◆ Existing concessioner general manager.
- ◆ Concessioner employee(s) responsible for financial matters.
- ◆ Concessioner employee(s) responsible for facilities management and maintenance.
- ◆ Park superintendent.
- ◆ Park concessions specialist(s).
- ◆ Appropriate park management team members.
- ◆ Local area chamber(s) of commerce.
- ◆ Economic development agencies.
- ◆ Tourism organizations.
- ◆ Local park partners.
- ◆ Management of competitive/comparable businesses.

4.3.2 Market Analysis

The market analysis helps us understand future demand expectations for commercial visitor services. The market analysis identifies visitor needs and how in-park and out-of-park markets

meet these needs. The project team uses the market analysis to understand how visitors may accept changes in the operation of commercial services.

Not all prospectus projects need a market analysis. CS may also conduct a market analysis for reasons other than prospectus development such as to support planning processes. The regional financial analyst or an IDIQ consultant typically completes a market analysis. Depending on the complexity of the project, some or all of the project team members will review this report.

4.3.3 Rate Study

This optional task has the IDIQ consultant conduct a rate study to identify comparable properties, establish approved rates, or develop estimated rates for required services under the next concession contract. Not all prospectus development projects will require consultant assistance to complete this task.

(See the section on Rate Administration Policies in Chapter 6 for additional information)

4.3.4 Personal Property Valuation

The Program obtains valuation of personal property for concession contracts with a significant amount of personal property or individual items of personal property with significant value (e.g., buses or ferries). Regional Directors must obtain the services of a private contractor to estimate the value of personal property for all prospectus development projects for operations with a significant amount of personal property assets. Regional chiefs must consult with the WASO branch chief for planning and development to discuss the need to obtain such services. The personal property valuation provides important information for the financial analysis for a future concession contract.

For 1965 Act contracts, the successor concessioner must often purchase the personal property used or held for use for the purposes of the contract from the existing concessioner. Although each 1965 Act contract may contain unique language, this property generally includes equipment, merchandise, and supplies. We obtain the valuation of this property to help develop an estimate of the investment the future concessioner must make at the onset of the future contract as well as future investments, tax consequences, and investment recovery at the end of the contract term.

Standard contract language under 1998 Act contracts does not require the successor concessioner to purchase the existing concessioner's personal property. To support an accurate financial analysis, however, we often value the existing concessioner's personal property to estimate:

- ◆ Value of personal property a successor concessioner would need to start up operations.
- ◆ Amount a successor concessioner would spend to replace personal property over the life of the contract.
- ◆ Cost to insure the personal property.
- ◆ Tax effects of personal property depreciation.
- ◆ Expected recovery of investment to the concessioner for personal property at the end of the contract term.

4.3.4.1 Components of Valuation

A personal property valuation includes:

- ◆ The estimated fair market value and replacement cost of all concessioner-owned personal property used or needed for concession operations on the expected effective date of the new contract.
- ◆ A replacement schedule and cost analysis for all concessioner-owned and government-owned personal property used or needed for concession operations for a period of 20 years from the expected effective date of the new contract.

4.3.5 Financial Baseline Buildup Report

The baseline buildup report examines historical financial performance of each department, outlines future revenues and expenses, and documents assumptions. The baseline buildup report also includes investment and alternative scenario analyses of future revenues and expenses to determine an appropriate minimum franchise fee. The baseline buildup report has two parts:

- ◆ A written narrative
- ◆ An Excel-based financial model

The baseline buildup report consists of a technical analysis of the current operation and future financial projections including a minimum franchise fee and alternative scenarios for consideration at the scenario meeting. Everyone attending the scenario meeting should first review the baseline buildup report.

4.3.5.1 Components of the Baseline Buildup Report

The baseline buildup report determines the basic financial viability of the business opportunity and usually includes a pro forma income statement, operating cash flow statement, depreciation schedule, and all assumptions made while developing the financial model. The baseline reflects a status quo contract against which we measure scenarios that would modify the operations.

This report considers the following three components:

Financial Analysis

The financial analysis:

- ◆ Represents a future status quo contract structure assuming no material changes to operations.
- ◆ Analyzes the historical financial performance of the operation and identification of trends that should include recasting historical AFR and other financial data into a standard accounting format.
- ◆ Performs an operational analysis by comparing financial data to industry benchmarks and, if available, other comparable resources.

Investment Analysis

The investment analysis:

- ◆ Expands the financial analysis by adding investments required upfront and throughout the contract period, such as maintenance and personal property investments, to determine the appropriate minimum franchise fee for the Prospectus.

- ◆ Includes the development of an appropriate hurdle rate, typically an internal rate of return, and estimates the ending value of LSI, when applicable.

Scenario Analysis

The scenario analysis:

- ◆ Explains incremental changes from the status quo resulting from alterations to services and facilities or both.
- ◆ Demonstrates the effect of each scenario on initial investment, revenues and expenses, franchise fees, and the financial viability of the operation.
- ◆ Considers the federal minimum wage for contractors under Executive Order 13658 and implementing regulations at 29 CFR Part 10. These requirements apply to all concession contracts publicly solicited on or after January 1, 2015, for services provided in the 50 United States and the District of Columbia. A memorandum dated December 22, 2014 (available on the Program's SharePoint [site](#)) explains the methodology to use in include this analysis.
- ◆ Considers regular and prevailing wages based on the SCA (when applicable).
- ◆ The SCA of 1965 (41 U.S.C. § 351) may apply to some concession contracts. In general, it only will apply when the service provided principally benefits the government and is not simply a service for the enjoyment of a visitor. For example, a park that has restricted access to the park or park area (such as Alcatraz, the Statue of Liberty, or Denali's interior Road) may fall under the provisions of the SCA. In these cases, the financial analysis must consider any potential financial consequences the SCA imposes on the future concessioner. Such considerations generally include using the federal prevailing wage for the job classification of the employee providing the service. The financial model (described below) should show the consequences of including the prevailing wage expense as well as the estimated wages should the SCA not apply. Unless the U.S. Department of Labor (DOL) or a court of competent jurisdiction has determined the SCA applies to a specific concession contract, the Service typically will not issue the prospectus assuming the SCA applies. Should a DOL determination or other action compel the Service to apply the SCA during the solicitation period, the information developed at this stage will enable timely changes to the prospectus to avoid unnecessary delays.
- ◆ Frequently, the difference between the wages applied under the SCA and those likely paid by the concessioner will have little consequence in the financial profile of the concession contract. In those cases, the regional chief should include the following language in the business opportunity:
 - The U.S. DOL has opined that some transportation services under National Park Service concession contracts are subject to the provisions of the SCA of 1965, 41 U.S.C. §§ 351-358. The Service believes this operation is not subject to the SCA, but if the U.S. DOL determines otherwise, the Service will include the appropriate provisions in the draft contract. The Service also believes that application of the SCA will not materially affect the opportunity of the concessioner for a net profit in relation to the capital invested and the obligations of the draft contract.

Note: Concerns about the potential applicability of the SCA to any concession contract should be brought to the attention of the regional chief and WASO program manager.

Excel-based Financial Model

The financial model includes all components of the financial analysis and the investment analysis. The Excel-based Financial Model allows for real-time decision-making. At a minimum,

the financial model accommodates real-time changes for each of the following concession contract variables:

- ◆ Contract term. The model shows changes resulting from changing the length of a contract, usually from five to 20 years in one-year increments.
- ◆ Concessioner hurdle rate, or the expected return on investment expected by others in the same industry, adjusted appropriately considering the risks of the operation. Sometimes, different scenarios may present different risks, and this factor should change accordingly.
- ◆ Changes resulting from different proposed scenarios including a Concession Facility Improvement Program (CFIP), personal property upgrades, and changes to required versus authorized services.
- ◆ Expansion or reduction of operations as reflected in the proposed scenarios.
- ◆ Operational capacity by facility (e.g., available room nights, occupied room nights, number of seats, cover counts, and restaurant turns).
- ◆ Repair and maintenance reserve (RMR) based on the expected component renewal (CR) requirements of the concessioner. CFIP's typically will change this percentage, as will options eliminating or adding the use of facilities.
- ◆ Facility-based repair and maintenance expenses.
- ◆ Rate increases by service (e.g., food and beverage and lodging) justified by changes to operations or inflation.
- ◆ Inflation factor (revenue and expenses).
- ◆ Initial and ending personal property and LSI values.
- ◆ Ability to switch between standard and other LSI formulas.
- ◆ Startup costs such as initial working capital, management hiring, relocation, training, and other costs deemed appropriate by the consultant and the NPS.

4.3.6 Concessions Facility Improvement Program Analysis

4.3.6.1 Introduction

The decision whether to include a Concessions Facility Improvement Program (CFIP) as a requirement for a new contract results from the Scenario meeting. A CFIP could involve new construction, remodels of existing facilities, and curing of extensive deferred maintenance (DM). Factors to consider when deciding whether to include a new facility or substantial remodeled facilities as a CFIP include unmet market demand, changes to the financial viability of the contract (including investment requirements, resulting LSI, and ongoing maintenance costs), and compliance issues including NEPA requirements.

4.3.6.2 CFIP Approval Process

Depending on the scope and cost of the CFIP, the project may require approval at the regional and WASO levels. Only the director may approve concessioner-funded construction of new structures and additions to structures regardless of cost, and major rehabilitations of \$1 million or more.

Individual regional policies and guidance establish approval requirements of the DAB. The Park Planning, Facilities and Lands Directorates' Facilities Projects Life Cycle Business Practices guide includes these policies and describes the contents of DAB submission packages and DAB

requirements by dollar threshold. Subject to additional regional requirements, projects between \$500,000 and \$1 million must obtain regional DAB, a WASO DAB employee review, possibly a WASO DAB full review depending on the WASO DAB employee review recommendations, and a value analysis. Projects over \$1 million require regional DAB review, WASO DAB full review, and a value analysis. Regional DAB reviews are recommended for projects below \$500,000, with a value analysis being required for projects \$300,000 and higher. Early consultation with the regional DAB is highly recommended.

4.3.7 Scenario Analysis and Meeting

The scenario meeting brings together employees to make decisions regarding the future structure and required elements of the new concession contract. In the meeting, the group considers the implications of the Baseline Buildup Report and alternative scenarios that differ from the Baseline.

Participants in the meeting include the project team and the park superintendent (and other management personnel when appropriate). Generally, participation by the Office of the Solicitor helps avoid questions and concerns during the legal review steps.

4.3.7.1 Process

Prior to developing the SOS, the project team works with interested NPS employees to develop alternative scenarios that present changes from the status quo based on the park's objectives and goals. Scenarios may involve changes in services (required and authorized), operations, land assignments, and asset construction or renovation.

The regional project manager and park field coordinator prepare the decision-makers in advance to arrive at the meeting informed about the decisions they need to make.

During the meeting, the group considers an overview of the contract and the market. The financial model demonstrates the potential financial and operational effects of various scenarios on the contract, including effects to the IRR and franchise fee.

Participants discuss the various scenarios and other relevant factors including:

- ◆ Investments.
- ◆ Future operations.
- ◆ DM.
- ◆ Maintenance expense and reserve requirements.
- ◆ CFIPs.
- ◆ PI and LSI issues (including required contractual depreciation when appropriate).
- ◆ Personal property.
- ◆ Franchise fee.

Participants should ask questions and voice concerns during the scenario meeting. Raising concerns or making changes later in the process usually results in additional costs for the park and delays. This should be the final decision point meeting for park employees.

The scenario meeting results in decisions on the final contract structure. Participants choose the optimal scenario and agree on the following:

- ◆ Term of the contract.
- ◆ Minimum franchise fee pending confirmation through franchise fee analysis.

- ◆ Curing of DM.
- ◆ Changes to services.
- ◆ Recommended purchase of PI or LSI or using other than the standard formula for the value of LSI.
- ◆ NPS investment.
- ◆ CFIPs.

4.3.8 Insurance Requirements

The Program has a contracted insurance consultant to recommend the types of liability coverage and minimum level of insurance to protect visitors, park resources, the future concessioner’s business opportunity, and the interests of the federal government. As part of the process for developing prospectuses, temporary contracts, and other concessions contracts, regional chiefs must submit a request for the insurance consultant to develop insurance requirements and provide cost estimates. The regional project manager and park field coordinator complete the request form and submit the form and all other required information to the WASO Program within two weeks following the completion of the Scenario meeting.

Except as provided below for certain recreation activities, when a regional director decides to require insurance types and levels other than those recommended by the Program’s insurance consultant, he or she must explain the basis of that decision in writing prior to the release of the prospectus.

For certain category III contracts providing recreation activities including guided hunting, fishing, mountaineering, hiking, backpacking, horseback riding, and rafting, a regional director must use the coverage appearing on the following risk management table.

Table 4-1: Risk Profile to Set Commercial Liability Insurance Minimums – Recreation Contracts

Potential for Multiple-person Accident and/or more Serious Accident	Few Number of Participants	Many Participants
High- Minimums	\$1M per occurrence and \$2M aggregate	\$2M per occurrence and \$4M aggregate
High – Example Services	Guided Mountaineering	Class IV – V Guided Rafting
Medium - Minimums	\$1M per occurrence and \$2M aggregate	\$1.5M per occurrence and \$3M aggregate
Medium – Example Services	Guided Horse Rides	Class III – IV Guided Rafting
Low -Minimums	\$500K per occurrence and \$1aggregate	\$1M per occurrence and \$2M aggregate
Low – Example Services	Guided Backpacking and Guided Hunting	Class I – III Guided Rafting

These concession contracts will require U.S. Department of Transportation minimum insurance requirements for automobile liability. When we use the levels set out above, we include the

recommended coverage in the business opportunity section of the prospectus to advise interested parties of the levels recommended by the Program's insurance consultant.

The WASO Program periodically works with the insurance consultant to review the insurance exhibit for concession contracts. As the insurance industry changes, the types of required coverage and the minimum amounts or limits for a particular coverage may change.

The Service requires concessioners to obtain and maintain insurance in accordance with the terms of its concession contract. Concessioners must provide a certificate of insurance at the commencement of the contract and then annually thereafter. NPS Management Policies prohibit concessioners from operating without general liability insurance.

4.3.8.1 Joint Use Buildings

In some concession operations, the Service assigns the concessioner part of a building occupied by the NPS. For example, the concessioner may have a retail operation in an NPS-operated visitor center. As a matter of policy, the NPS does not require concessioners occupying a portion of a government building to insure 100 percent of that building.

The regional director has the delegated authority to waive the requirement that a concessioner occupying a joint use building obtain property insurance; however, to protect the federal government, the regional director should require the concessioner to obtain "Damage to Premises Rented to You" coverage.

4.3.9 Scenario Executive Summary

After the scenario meeting (described above), the financial analyst (contractor or regional) prepares an Executive Summary outlining the decisions made during that meeting. The Executive Summary includes the following components:

- ◆ Required and authorized services offered in the new contract.
- ◆ Existing services (if any) eliminated in the new contract.
- ◆ Improvement projects considered during the Scenario Analysis and those selected with the financial consequences.
- ◆ Investment and contract variables and assumptions, including:
 - Contract term.
 - Beginning and estimated ending LSI value estimate.
 - Estimated beginning and ending personal property values.
 - Other startup costs.
 - All maintenance expense requirements.
 - Proposed RMR, if applicable.
 - Target internal rate of return (hurdle rate).
 - Minimum proposed franchise fee.
- ◆ Summary of outstanding issues or items that need resolution.
- ◆ Description of planned resolution for issues, including person responsible and target dates.

4.3.10 Franchise Fee Analysis

The franchise fee analysis includes an updated version of the Excel-based financial model developed for the baseline buildup report and scenario meeting and a written narrative. The

franchise fee analysis recommends a minimum franchise fee, the amount of the RMR and an explanation of all projected investment requirements for the next contract.

This written narrative includes, but is not limited to, a summary of the market analysis updated to the current time (as necessary), historical financial and operations analysis, proposed required and authorized services, detailed financial analysis by revenue department, explanation of the methodology for determining the hurdle rate, an overview of all considered scenarios, the rationale for the selected scenario, details on the required investments, and an investment analysis including franchise fee calculation.

4.3.11 Real Property Condition Assessment

A CA presents a point-in-time evaluation of the concession facilities we will assign the future concessioner under the next contract. The Program uses contracted consultants to conduct the analysis and produce the reports within a timeframe that allows the outputs of the final report (including negotiated final values for PI and LSI) to be incorporated into the baseline buildup report.

The CA identifies current conditions of concession facilities and future maintenance requirements such as recurring maintenance (RM), preventive maintenance (PM), DM, and CR. Prospectus projects for all category I and category II contracts must include a CA, although the extent of such assessment may vary depending on the scope of the concession operations and the age of any existing CA. When a project team wants to use a CA more than three years old to support prospectus development, the WASO Asset Management Branch reviews the CA to determine if it continues to provide sufficient information for prospectus development. Only the associate director of business services, may waive the requirement to have a CA for a prospectus development project.

4.3.11.1 Condition Assessment Process

The CA COR will prepare an SOS following the same process described above for prospectus development. A contracted architectural and engineering firm performs each CA using the most current version of the commercial services CA scope, available through the WASO Program. The CA contractor reviews and validates inventory, inspects concession facilities to identify deficiencies and maintenance requirements, and documents conditions as measured against applicable maintenance or condition standards. A CA contractor performs an in-depth physical (but not structural) inspection of concession facilities, including the components and equipment associated with the facilities, and identifies its respective maintenance requirements.

4.3.11.2 Condition Assessment Purpose

CA data provides information needed to estimate ending PI values and LSI values to use in negotiating those values with the incumbent concessioner. The CA also provides information for long-term maintenance planning and annual work plans and budgets. The Service uses this information in the franchise fee analysis.

If a prospectus project contemplates construction of new facilities or substantial remodels or upgrades to existing facilities, the CA contractor performs the Class C estimates for such projects as an additional task under the CA SOS. Park and regional employees must identify these requirements early in the due diligence process to include it in the CA SOS.

4.3.11.3 Initiating a Condition Assessment

Generally, the WASO Program's Asset Management Branch employees serve as the CA COR providing contracting and project management support for all WASO-level CAs and data review for all CAs servicewide. Park and regional employees are responsible for contracting and management of non-WASO-level CAs.

The CA SOS specifies how to conduct the CA, defines terminology, identifies what information is to be gathered, and details how the information is to be submitted. The SOS defines the roles and responsibilities for all parties and outlines the expected performance standards for each task.

The CA team typically is the same as the prospectus development project team defined above, with the addition of asset management employees.

4.3.11.4 Condition Assessment Methodology

The key components of a CA include:

- ◆ Asset and component verification
- ◆ Life cycle analysis of asset components
- ◆ Component depreciation analysis
- ◆ Identification of life cycle maintenance requirements
- ◆ Identification of maintenance deficiencies

The CA process has three distinct phases: pre-site visit planning, site visit, and post-site activities. During the pre-site planning and preparation phase, the project team establishes the CA timeline, specific requirements of the SOS, and identifies the assets to be inspected. The importance of accurately identifying assets assigned as concession facilities under the next contract cannot be emphasized enough. Without an accurate inventory, not only will the accuracy of the CA be at risk, but also the profile of the next concession contract. to ensure not only an accurate CA, but also a complete financial profile for the next concession contract. During this phase, the project team confirms the roles and responsibilities of key employees involved in the CA. Lastly, the project team establishes communication and procedural protocols between the NPS and the CA contractor and sets objectives and expectations. Prior to the commencement of the CA, the COR should discuss required deliverables with the CA contractor to ensure the result meets Service standards.

The CA site visit begins with a project kick-off meeting to introduce Service, concessioner, and contractor personnel. This meeting provides an opportunity to discuss field inspection logistics and verify the inspection schedule and access to facilities as well as to reach understanding on the terms and expected outcomes of the CA.

The site inspection provides an opportunity for CA inspectors, accompanied by park and concessioner employees, to verify asset and component inventories, identify future life cycle maintenance requirements, identify maintenance deficiencies, and generate photographs and drawings to further document findings. Park employees should arrange for a park representative, preferably someone familiar with the concession facilities, to accompany the contractor during the fieldwork to answer questions and alert the contractor to issues not easily detected during the assessment.

The CA post-site activities include the submittal and review process of the CA data. Park, region

and WASO Program employees have specific roles and responsibilities regarding the data-approval process.

4.3.11.5 Condition Assessment Approval Process

The CA approval process ensures the accuracy and completeness of the CA data. Several reviews occur within the approval process, including CA contractors and WASO Program, regional, and park employees. The approval process concludes when the COR approves the CA data.

The WASO Program review and approval process includes a technical analysis of the CA data using systematized checks for data quality. The checks ensure the form and content of the CA deliverables correspond to the prescribed criteria specified in the SOS.

Park and region employees focus their efforts on reviewing and commenting on CA areas not specifically data-driven but more directly related to knowledge of the contract, park, and assets included in the CA.

CS WASO, Asset Management branch, has developed guidelines (*Business Practices for Park and Regional Review of CA Deliverables*) to assist in CA reviews.

4.3.11.6 Use of Condition Assessment Data

Once we have approved the CA data, we use it for the following purposes:

- ◆ **Prospectus Financial Analysis** - The CA forecasts the costs of maintaining the concession facilities and estimates PI or LSI interest liability to support negotiating the final amounts to include in the financial analysis for the prospectus.
- ◆ **Facility Management Software System (FMSS)** - The FMSS is the repository for all DOI federal facilities. We use CA data to update asset condition and maintenance requirements in FMSS.

4.4 Phase 3 - Prospectus Document Development and Review

36 C.F.R. Part 51 identifies what a prospectus must include. The previous sections in this chapter covered how the Service develops that information. This section describes using that information to develop the prospectus document.

(See the section on Simplified Prospectuses Documents for Small Contracts in this chapter for additional information)

4.4.1 Draft Prospectus Documents

4.4.1.1 General

A prospectus markets the future concession contract to potential offerors for the new contract. This document must emphasize the benefits and attractiveness of the business opportunity.

The outline of a prospectus depends on the type of concession contract: category I, II, or III. Generally, most, but not all, category III contracts will qualify for the simplified documents described in the Simplified Prospectuses for Small Concessions Contracts section below.

Prospectus Documents	Category I	Category II	Category III	Contains Required Language?	Has Signature Block
Business Opportunity	Yes	Yes	Yes	Yes (introduction)	No
Proposal Instructions	Yes	Yes	Yes	Yes	No
Proposal Package	Yes	Yes	Yes	Yes – Specific Selection Factors and PSF 3, 4, & 5.	No
Draft Contract	Category I SCL	Category II SCL	Category III SCL	SCL	Yes
Leasehold Surrender Interest	Exhibit A			SCL	No
Operating Plan	Exhibit B	Exhibit A	Exhibit B	SCL - introduction	No
Nondiscrimination	Exhibit C	Exhibit B	Exhibit A		No
Assigned Land and Real Property Improvements	Exhibit D	Exhibit C	Exhibit C	SCL – Introduction and format	Yes
Assigned Government Personal Property	Exhibit E	Exhibit D	N/A	SCL – introduction and format	Yes
Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Project Procedures	Exhibit F	N/A	N/A	SCL	No
Repair and Maintenance Reserve Project Procedures	Included in Exhibit F	Exhibit E-1 only if the contract includes a Repair and Maintenance Reserve	N/A	SCL	No
Leasehold Surrender Interest (Value)	Exhibit G	N/A	N/A	SCL	Yes
Maintenance Plan	Exhibit H	Exhibit E	N/A	SCL – introduction	No
Insurance Requirements	Exhibit I	Exhibit F	Exhibit D	SCL	No
Transition Requirements	Exhibit J	Exhibit G	Exhibit E	SCL	No
Licensed Marks	Exhibit K	Exhibit H	Exhibit F	Title	No

Appendices	Yes	Yes	Yes		No
------------	-----	-----	-----	--	----

4.4.1.2 Business Opportunity

The business opportunity describes why someone should submit an offer for the contract. It emphasizes the advantages of the next contract, provides a useful profile of the park and competing market, contains operating information of the current contract, and provides projections of anticipated future performance. As a marketing document, it provides potential offerors the structure and opportunities under the next contract, information about current contract requirements, and how it fits into the park and surrounding market area.

Although most content of business opportunity varies according to the park and concession contract, certain requirements about the content exist, especially financial operating history and projections.

(See 36 CFR § 51.5)

4.4.1.3 Proposal Instructions

The proposal instructions provide offerors key information and instructions for submitting questions and proposals. The instructions describe how NPS evaluates proposals and provides offerors information about the availability of a debriefing following the selection of the best proposal. The Program has standard proposal instructions each prospectus must include.

4.4.1.4 Proposal Package

The proposal package instructs offerors to provide specific information about their ability to provide the visitor services required under the draft contract in a manner that protects, preserves, and conserves the resources and values of the park. The Service considers information in the proposal package to select the best proposal for the next contract.

Developing a quality proposal package requires a great deal of information gathering and analytical work early in the process. A high-quality proposal package results in proposals that provide helpful, relevant information, as well as an efficient evaluation process. Although a substantial amount of time goes into proposal package development, efficiencies occurring throughout the remainder of the process make this up-front investment worthwhile.

The proposal package consists of two parts:

1. **Offeror's Letter** - The offeror's letter forms the basis of an offeror's formal offer to enter into a concession contract. Every prospectus must contain the standard form of the offeror's letter.

In some circumstances, the letter may include additional provisions about unique requirements, such as buying LSI under the current contract. Every proposal from an offeror must include an unchanged, signed offeror's letter.

2. **Selection Factors** - This part consists of five principal selection factors required by law and, for most concession contracts, at least one secondary selection factor. The regulations at 36 C.F.R. Part 51 specify the language in the principal selection factors and the related scores. We must use this language and the related scoring.

The five principal selection factors seek information on:

- ◆ How the offeror would protect, preserve, and conserve park resources affected by the concession activities under the draft contract. (0-5 points)

- ◆ How the offeror would provide the visitor services under the draft contract. (0-5 points)
- ◆ The offeror's experience in providing services similar to those under the draft contract. (0-5 points)
- ◆ The offeror's financial capability to carry out the requirements of the draft contract. (0-5 points)
- ◆ The offeror's agreement to pay the minimum franchise fee described in the prospectus, and, possibly, a higher fee. (0-4 points)

For concession contracts expected to generate more than \$100,000 in annual gross receipts, the regulations require a secondary selection factor that seeks information on the environmental program aspects of the offeror's operation under the draft contract. The regulations at 36 CFR Part 51 also specify the language and score for this secondary selection factor (3 points). We may include additional secondary selection factors when we use the first secondary selection factor, for up to 3 additional points.

The WASO Program has additional guidance on developing proposal packages available in the [Prospectus Development Toolbox](#) on the Program's SharePoint [site](#).

4.4.1.5 Draft Contract

The WASO Program Planning & Development Branch provides templates for current standard contracts. Except for the descriptions of the required and authorized services in the contract, sections of the operating and maintenance plans, information about specific real property and personal property assigned, and specific insurance coverage amounts, the language in all categories of contracts, including all exhibits, is standard contract language. Deviations from standard language, whether as published in the prospectus or after the award of the contract, require approval of the associate director of business services. The WASO Program has templates to follow when requesting a deviation from standard contract language.

The draft contract contains the requirements for concession operations and includes all exhibits appropriate to the category of contract.

The WASO Program has templates for all categories of contracts and applicable exhibits available in the [Prospectus Development Toolbox](#) on the Program's SharePoint [site](#).

4.4.1.6 Appendices

The appendices provide supplemental information. The appendices are provided electronically or on a CD attached to the hard copy of the prospectus. Appendices must include copies of the current concession contracts, Word versions of the proposal package, and Excel spreadsheets for response to Principal Selection Factor 4. The WASO Program Planning & Development Branch can provide samples of other required and commonly provided appendices.

4.4.2 Roundtable Meeting

During the roundtable meeting, the project team and decision-makers review and comment on the prospectus draft documents to consolidate and expedite changes to the prospectus. The roundtable review also provides the opportunity to resolve any outstanding issues through group discussion and consensus. This meeting, however, is not the occasion to make significant changes to the proposed operations; the project team should complete those decisions earlier in the process.

4.4.2.1 Process

The regional project manager makes draft documents available for review by all attendees 4-5 weeks prior to the scheduled roundtable meeting. The regional project manager or consultant also should provide an issues memo outlining known areas of discussion.

Prior to the meeting, participants review the documents and provide comments, generally in electronic form. The regional project manager should consolidate comments prior to the meeting for ease of discussion.

After the meeting, the regional project manager or consultant summarizes the important points of the meeting for the administrative record and identifies outstanding issues remaining at the end of the meeting.

4.4.2.2 Attendees

Roundtable participants should include, at a minimum, the regional project manager (who leads the meeting), the WASO project manager (when applicable), one or two representatives of the IDIQ Contracting firm (if applicable), regional chief of concessions, attorney from the appropriate Office of the Solicitor, park field coordinator, and the park superintendent (or designated decision-maker for the park). Depending on the size of the operation or other unique contract attributes, WASO Program branch chiefs and a D.C. based DOI solicitor may attend.

4.4.3 Final Policy/Legal Review of Prospectus Documents

Once the project team resolves the issues and updates the documents, the documents continue on to regional policy and regional solicitor review and then WASO Policy and solicitor review (when applicable).

4.4.4 Issue Prospectus

When all the documents have received appropriate approvals, the regional project manager organizes, prints, and publishes the documents. The WASO Program has guidelines on how to format a Prospectus for consistency within the Program. Chapter 4 has information about the solicitation process.

4.5 Simplified Prospectuses for Small Concessions Contracts

The 1998 Act directs the Service to use simplified procedures for small individually-owned concession contracts (“small contract”) in the competitive process for selecting concessioners. The Service has defined a small contract as a concession contract with anticipated gross receipts of less than \$100,000 based on a conclusion that sole proprietors likely would submit proposals for concession contracts of this size. To determine whether a concession contract under a prospectus falls within the small contract category, the Service uses the estimated gross revenue during the first year of operation under the new contract.

The Service has developed and will continue to develop simplified procedures for small contracts and concessioners under those contracts. For prospectus development, the Service must use the simplified procedures for small contracts.

Because the Service determined sole proprietors also likely would submit proposals for

concession contracts between \$100,000 and \$500,000, regional directors may use simplified procedures on a contract-by-contract basis for those concession contracts with gross receipts of more than \$100,000, but less than \$500,000. Again, to determine whether a concession contract under a prospectus falls within this category, the Service uses the estimated gross revenue during the first year of operation under the new contract.

4.5.1 Simplified Prospectus Procedures (Pending Results of Test Projects)

4.6 Preferred Offeror Determination

A qualified concession contract is a new concession contract for which the NPS determines the existing concessioner has a right of preference to match the better terms and conditions of the best proposal for a qualified concession contract.

After deciding what services to include in the next contract, the Service must consider whether the contract is a qualified concession contract.

36 CFR Part 51 Subpart E and Subpart F describe the right of preference to a new concession contract and determining a preferred offeror. Although 36 CFR Part 51 required the NPS to make this determination no later than the date of issuance of a prospectus, the project team should identify a potential preferred offeror, if one exists, early in the prospectus development process, and request approval of that determination, if applicable, as stated in 36 CFR Part 51.

Chapter 5: Contract Solicitation, Selection, and Award

5.1 Introduction

With limited exceptions, the 1998 Act requires a competitive selection process. As described in Chapter 4, the Service has developed standard processes for developing prospectuses. This chapter describes the processes for soliciting and evaluating proposals and awarding concession contracts. This chapter also provides guidance on processes related to noncompetitive contracts such as temporary concession contracts and long-term, sole source concession contracts.

The 1998 Act requires us to engage in a competitive selection process to select the best proposal for each concession contract. Exceptions to this requirement include temporary concession contracts, extensions of concession contracts, and sole source concession contracts in extraordinary circumstances. The Alaska National Interest Lands Act (PL 96-487) also provides historical preferences for certain operators that eliminate the need for a competitive process. This chapter describes the contract solicitation, selection and award processes developed to meet these requirements.

5.2 Contract Solicitation

5.2.1 Advertising

The 1998 Act requires the Service to advertise the availability of a prospectus publicly. The Service currently publishes all prospectuses on fedbizopps.gov, the system for notifying the public of business opportunities with the federal government. The Service also should notify the incumbent concessioner directly and issue a press release. In all cases, the Service must post the prospectus on the Program's public website.

5.2.1.1 FedBizOpps.gov and Commercial Services Website

Regional offices prepare and post prospectus information on fedbizopps.gov. In addition to the fedbizopps.gov announcement, regional offices must provide all prospectus documents and supporting information to the WASO Program office to post on the WASO Program's public website. The fedbizopps.gov announcement must include a link to the Program's public website.

The announcement should include the following information:

- ◆ Date the prospectus will issue.
- ◆ Date proposals are due.
- ◆ Brief description of visitor services required in the contract.
- ◆ Description of how interested parties may obtain a hard copy of the prospectus.
- ◆ Information about downloading a copy of the prospectus from the CS website.
- ◆ Regional office point of contact to notify if someone downloads the prospectus. This allows the regional office to keep an accurate record of who has obtained copies of the prospectus in the event the region needs to disseminate additional information to all interested parties.
- ◆ Site visit information including the point of contact.

5.2.1.2 Other Publications

The regional and park offices may advertise the prospectus in local newspapers and the park's website. For larger operations, the regional and park offices should advertise the opportunity in trade magazines. The regional and park offices should coordinate selecting appropriate

publications for advertising prospectuses and coordinate on the content of press releases. In addition, park employees must notify appropriate congressional delegates about a prospectus and include potentially controversial information such as rights of preference. Park employees should pursue other means of notifying interested parties, such as attending local Chamber of Commerce meetings.

The regional office should charge a reasonable fee for a hard copy of the prospectus to recover the costs of printing, binding, and mailing the document, and should not send a copy of the prospectus until after receipt of payment.

5.2.1.3 Recipient Log

The regional office maintains a recipient log to record:

- ◆ Contact information (name, address, phone number, e-mail) for all persons or businesses requesting a copy or copies of a prospectus.
- ◆ Number of copies requested.
- ◆ Date of receiving the request.
- ◆ Date of mailing the prospectus.
- ◆ Mailing address for the prospectus.
- ◆ Express delivery tracking number, if applicable.

The log also should include contact information for those who download copies of the prospectus online as such information becomes available. The recipient log will become part of the administrative record.

5.2.2 Site Visit

The site visit provides an opportunity for interested parties to tour the concession facilities and obtain a better understanding of the business opportunity. The site visit affords potential offerors an opportunity to conduct due diligence, become familiar with the local environment of the park and surrounding area, and evaluate the condition of the concession facilities. The site visit also markets the prospectus and allows the Service to gauge interest in the business opportunity. A site visit should occur for all category I and category II contracts, especially WASO-level contracts. The regional and park employees share lead responsibility for site visits.

5.2.2.1 Timing

Typically, site visits occur after the release of the prospectus. In some circumstances, however, the Service may need to conduct a site visit prior to the release of a prospectus when seasonal and climate issues require the closure of concession facilities before issuing the prospectus. In those circumstances, site visits provide an orientation and overview since the attendees will not have access to the contents of the prospectus and the requirements of the draft contract.

When a site visit occurs after release of the prospectus, the Service should allow sufficient time (generally two to three weeks) for interested parties to review the prospectus, understand the opportunity, and formulate questions. In addition, the Service must conduct the site visit before the deadline for submitting questions to provide time for written responses to questions that arise during the site visit as well as to provide time for interested parties to submit additional questions.

As necessary, the Service coordinates the site visit with the incumbent concessioner well in advance to minimize operational disruptions. As stated above, the [fedbizopps.gov](https://www.fedbizopps.gov) notice of the

availability of the prospectus should include information about the site visit. This information also appears in the prospectus and on any website where the Service posts the prospectus. If information about the site visit changes, the regional office must notify individuals and businesses that have requested copies of or downloaded the prospectus and post notice on fedbizopps.gov. The Service also may announce the site visit through press releases.

5.2.2.2 Site Visit Information

The Service must provide consistent information to all potential offerors in keeping with 36 CFR §§51.6 and 55.7. During site visits, Service participants may not answer questions but should collect written questions and respond to them along with other questions submitted before the applicable deadline. During the site visit, the Service representatives must reiterate the provision in the proposal instructions that parties may rely only on information the Service provides in writing.

Generally, the Service provides a printed overview (based only on information available in the prospectus) during the site visit. Immediately following the site visit, the regional office must post the overview with the prospectus on the [Program's website](#). Information released for the site visit should include park brochures, floor plans of significant concession facilities (e.g., main lodges but not necessarily every cabin), visitation data, area information and history, operational information, and current land assignment maps. Sometimes more than one site visit occurs and, in those cases, the Service should manage the site visits consistently and share identical data.

On the day of the site visit, park employees register participants and obtain correct contact information for all future correspondence related to the solicitation process. When the Service anticipates many participants, the notice of the site visit may include information on restricting the number of representatives for each interested party.

The Service may need to release information about site visit attendees in accordance with the FOIA.

When site visits occur prior to the release of a prospectus, the Service may provide the following information in addition to general information about the park:

- ◆ Lists of the required and authorized services under the new concession contract.
- ◆ Description of the existing services (e.g., number of lodging rooms, capacity of food and beverage outlets, current approved rates).
- ◆ Gross revenues for the previous three years.
- ◆ Franchise fees (or special account payments) paid for the previous three years.
- ◆ Whether the new contract will include a franchise fee or RMR (or both) but not the amounts of either.
- ◆ Anticipated term of the new contract.
- ◆ Whether a preferred offeror exists.
- ◆ Required initial investment by the successful offeror including the types of expenses (e.g., personal property acquisition, working capital, and cure of DM) but not the Service estimates for those expenses.
- ◆ Anticipated important dates including the release dates, due date for questions, and due date for proposals.

As with other site visits, the Service must post all information shared during a pre-release site visit on the [Program's website](#).

5.2.2.3 Responsibilities

Regional and park offices work together to coordinate the site visit. Occasionally, regional office employees may attend the site visit to assist park employees with the event, especially when many attendees participate. Park employees should invite a representative of the incumbent concessioner to participate in the site visit. If some disruption may occur, park employees should arrange for a law enforcement presence. For WASO-level contracts, the WASO project manager may assist the regional office and park employees with site visit logistics including attendance at the site visit.

5.2.3 Questions during the Solicitation Period

Regional offices coordinate the development and distribution of the answers to questions asked during the solicitation period.

The proposal instructions in the prospectus provide specific instructions for questions. The inside cover of the prospectus provides the due date for questions and the Service point-of-contact who will receive questions.

Regional and park employees coordinate the review of questions and preparation of answers including questions submitted in writing during any site visit. When questions present issues of Program-level policy, the regional office should involve the WASO Program in the review process. The appropriate level of the Office of the Solicitor reviews all questions and answers. Typically, the same Office of the Solicitor representative that reviewed the prospectus prior to release will review the questions and answers. The NPS must make available all questions and answers to everyone on the recipient log and post a notice of availability on [fedbizopps.gov](https://www.fedbizopps.gov) as an amendment to the solicitation. Finally, the regional office submits the questions and answers to the WASO Program for posting on the [Program's website](#).

For WASO-level contracts, WASO Program employees must review and concur in the answers. The attorney for the WASO Program also must review answers that provide or changes substantive information in the prospectus.

When the region receives a large volume of questions, they should consider sorting the questions and answers by topic and posting the responses serially. In such cases (and where possible given the project's schedule), the region also may consider extending the solicitation period to provide sufficient time for interested parties to understand the large volume of information.

5.2.3.1 Process for WASO-level Contracts

The process for WASO-level contracts is as follows:

- ◆ Involve WASO Program team members in review of questions and preparation of responses.
- ◆ Submit draft responses to the WASO project manager to coordinate review by the WASO Program and Washington Office of the Solicitor.
- ◆ WASO Program concurs with responses (usually subject to comments).
- ◆ The regional office completes the process as described above.

5.2.4 Amendment and Cancellation of Prospectuses

The Service may amend or cancel a prospectus during the solicitation period. Amendments may include corrected information, additional information (such as answers to questions submitted),

or an extension of the due date for submittals. Regulations at 36 CFR § 51.11 provide direction on amending, extending, or cancelling a prospectus.

5.2.4.1 Providing Notice of Amendments

The regional office makes amendments available to all persons listed on the recipient log by posting a notice to fedbizopps.gov as amendments to the solicitation and posting the amendments to the [Program's website](#). The regional office also provides copies (via e-mail) of the amendment to everyone on the recipient log.

5.2.4.2 Additional or Corrected Information – Legal and WASO Review

The appropriate level of the Office of the Solicitor must review all amendments. Typically, the same representative of the Office of the Solicitor that reviewed the prospectus prior to release will review the amendments. For WASO-level contracts, WASO Program employees must review and concur with amendments. The attorney for the WASO Program also must review amendments that provide or change substantive information in the prospectus.

5.2.4.3 Due Date Extensions

The region may extend the due date of proposals. As with other amendments, the region must post notice of extensions on fedbizopps.gov and the Program's website. For WASO-level contracts, the region must obtain the concurrence of the WASO program chief for extensions. Generally, the Office of the Solicitor need not review extensions.

5.2.4.4 Cancellation

The region may cancel a solicitation at any time prior to the award of the concession contract when appropriate in the public interest. This may occur any time before the Service selects a concessioner or after selection but prior to award. For WASO level contracts, the region must obtain approval of the cancellation from the WASO program chief. The region must post notice of the cancellation on fedbizopps.gov and the WASO [Program's website](#).

5.2.4.5 Process for WASO-level Contracts

The process for WASO-level contracts is as follows:

1. Regional chief consults with the WASO program manager and WASO branch chief of planning and development.
2. Regional chief submits a draft request (including a briefing paper explaining the reasons for cancellation) to the WASO branch chief of planning and development to coordinate review by the WASO program chief and Washington Office of the Solicitor.
3. Regional director submits formal request including the briefing paper.
4. WASO Program prepares approval memo and coordinates Office of the Solicitor review.
5. WASO Program transmits signed approval memo to the regional director and regional chief of concessions.
6. Regional chief completes process as described above.

5.2.5 Amendments to and Clarification of Proposals by Offerors

Prior to the due date of proposals, an offeror may amend a submitted proposal by submitting such information to the point of contact identified on the inside cover of the prospectus

(typically the regional chief).

Regulations at 36 CFR § 51.15 have strict requirements for requesting and accepting additional information after the due date for proposals. Whenever the regional chief of concessions considers requesting amendments or clarifications, he or she must consult with the Office of the Solicitor. For WASO-level contracts, the regional chief of concessions must consult with the WASO program chief and branch chief of planning and development prior to transmitting a written request from the regional director to request and accept additional information after the due date. The WASO program chief may approve such request.

5.2.5.1 Process for WASO-level Contracts

The process for WASO-level contracts is as follows:

1. Regional chief consults with the WASO program manager and branch chief of planning and development.
2. Regional chief submits a draft request (including a briefing paper explaining the reasons to request or allow such information) to WASO branch chief of planning and development to coordinate review by the WASO program chief and Washington Office of the Solicitor.
3. Regional director submits formal request including the briefing paper.
4. WASO Program prepares approval memo and coordinates Office of the Solicitor review.
5. WASO Program transmits signed approval memo to the regional director and regional chief of concessions.
6. Regional chief completes process.

5.3 Proposal Evaluation and Selection

5.3.1 Receipt and Safeguarding of Proposals

Regional offices must establish routine processes for receiving proposals and protecting proposals.

5.3.1.1 Proposal Log

The regional office creates a log to inventory and document the receipt of the proposals. At a minimum, the log must include:

- ◆ Time and date the regional office receives the proposals.
- ◆ Contact information including name, address, and telephone number for all offerors.
- ◆ Whether the offerors signed the transmittal letters.
- ◆ Number of hard copies and electronic copies included with each proposal.
- ◆ Method of delivery (e.g., hand delivered, Federal Express, etc.).

One regional office employee must sign a certification as to the accuracy of this information and another must witness the signature.

5.3.1.2 Late Proposals

The regional chief of concessions must inform the regional director if the regional office receives a proposal after the deadline. The regional director may accept a proposal submitted shortly after the deadline if extenuating circumstances warrant such action. Extenuating circumstances may include adverse weather conditions, unusual traffic delays, and similar

events beyond the control of the offeror. "Shortly" typically means one or two days following the deadline depending on the nature of the extenuating circumstances.

When the regional director accepts a proposal submitted beyond the deadline, the regional chief of concessions must note the basis for such decision in the proposal log. When the regional director chooses not to accept a proposal submitted beyond the deadline, the regional chief of concessions must return the unopened proposal to the offeror with a written explanation of why the regional director did not accept it.

5.3.1.3 Securing Proposals

The Service must keep all proposals in its possession secure at all times. During panel deliberations, the panel chair and regional chief of concessions must implement procedures to maintain the security of the proposals. After the panel deliberations conclude, the regional chief must continue to secure all proposals. After the Service has awarded the new contract, the regional chief must retain one copy of each proposal for the administrative record, provide one copy of the successful proposal to park employees to maintain for the term of the contract, and either destroy the remaining copies or return them to the offerors at their expense. The region and park offices must continue to secure the proposals to protect the proprietary and other confidential information they contain.

5.3.2 Evaluation Panels

Regulations at 36 CFR Part 51 require the director to evaluate and score proposals based on the primary and secondary selection factors contained in a particular prospectus. The score for each selection factor must reflect the determined merits of a proposal in response to the selection factors and in comparison to the other proposals received.

The director has implemented this requirement through a process using evaluation panels. Evaluation panels review and analyze proposals and prepare a well-documented narrative evaluation, including recommended scores. All panel members and advisors must perform their responsibilities without actual or apparent conflicts of interest or bias. In addition, all panel members and advisors must maintain objectivity while reviewing proposals and not prejudge the merits of any proposal.

5.3.3 Evaluation Panel Membership

Regional directors convene evaluation panels with the expertise necessary to provide a credible analysis of the proposals reflecting the complexity of the operation and subject matter of the various selection factors.

Regional chiefs should identify potential panel members early, often before issuing the prospectus. For complex and high revenue projects, Regional chiefs should consider identifying a panel chair early enough to allow him or her to participate in the roundtable meeting and better understand the reasoning that leads to the development of the proposal package. In addition, regional chiefs should contact supervisors for permission to contact potential voting members. For regional-level contracts, the regional director must approve the final panel members, preferably at least two weeks in advance of the submission deadline for proposals. For WASO-level contracts, the WASO program chief approves the panel membership. The regional director should provide recommendations for panel membership to the WASO program chief at least 4 weeks prior to the submission deadline for proposals.

Panels usually consist of voting members and non-voting technical advisors. Technical advisors typically include an attorney from the Office of the Solicitor, a park representative, and subject matter experts provided by a contractor. Technical experts from other federal agencies may serve as a voting member or a non-voting technical advisor. Superintendents of parks with a concessioner who submits a proposal for the subject project may not serve on the panel. Park employees, including superintendents and other decision-makers from the affected park, may serve as technical advisors but not voting members.

All panel members, including technical advisors, must sign a Conflict of Interest and Confidentiality certificate (available through the WASO Program) as soon as they agree to participate in the panel. Panel members may not provide any information regarding the evaluation process, proposals, or results to any third party. The panel chair may provide such information only as directed by the deciding official.

Every panel must have a designated panel chair and at least one additional voting member. The number of proposals received will determine the number of panel members needed to complete the evaluation of the proposals timely. The roles of the panel members are as follows:

- ◆ **Panel Chair** - The panel chair works with the regional chief to establish procedures for facilitating the evaluation process including managing the proposal documents, how the deliberations occur, and guidance on preparing the evaluation document. The panel chair collects evaluation information from the panel members and consolidates it into the panel evaluation for policy and legal review. On occasion, the Service may have co-chairs, either to develop the skills of less experienced panel chairs or for complex or highly competitive prospectuses to alleviate the work burden. Should a panel member create disruptions or interfere with the orderly completion of the panel process, the panel chair should consult with the regional chief to determine whether to excuse that member from further participation.
- ◆ **Voting Panel Members** - Only current federal employees may serve as voting panel members.
- ◆ **Technical Advisors** - Except for the attorney from the Office of the Solicitor, technical advisors need not be federal employees. The Service frequently relies on consultants to provide financial and other technical expertise to assist in the evaluations when qualified federal employees are unavailable. A park representative (usually from the park CS) provides information on the park and concession operations and prepares a PowerPoint presentation to introduce the park and aspects of the concession operations to the panel. Ideally, the park representative participates in person when presenting information about the park and concession operations and when answering questions while the panel reviews the proposals. The park representatives should leave the panel prior to the scoring discussions. For most panels, an attorney from the Office of the Solicitor should attend scoring discussions and respond to questions from the panel chair or regional chief. Other federal employees, including other regional and WASO employees, may observe the panel with the consent of the regional chief.

5.3.3.1 Process for WASO-level Contracts

The process for WASO-level contracts is as follows:

1. Regional chief consults with the WASO program manager and branch chief of planning and development on candidates for panel membership.
2. Regional chief submits proposed panel membership, including proposed panel chair to the WASO branch chief of planning and development to coordinate review by the WASO program chief.

3. WASO program chief responds to the request.
4. Regional chief submits formal memorandum requesting approval from the WASO program chief.
5. WASO Program prepares approval memo.
6. WASO Program transmits signed approval memo to the regional director and regional chief of concessions.

5.3.4 Panel Responsibilities and Procedures

Panel members (including technical advisors assigned to specific selection factors) review and analyze proposals based on the five principal selection factors and any secondary selection factors in the prospectus. Panel members prepare written narrative evaluations describing the substantive similarities and differences among the various proposals, explaining they consider a proposal superior or inferior to others, and recommending scores for each offeror.

The Program's standard proposal instructions describe how the panel evaluates proposals. In summary, panel members review each proposal under the selection factors published in the prospectus. The panel must identify the pertinent information submitted in each proposal and determine a narrative and numeric score for each response, supported by a narrative analysis. For each selection factor, the panel creates a narrative explanation of the strengths and weaknesses of each subfactor and a summary comparison of the proposals. Panel members should not recite the content of the proposals, but glean the substantive information that distinguishes one proposal from the others. Panel members must then perform a critical analysis to identify and explain the differences among the proposals and explain why each proposal is better or worse than the others.

Generally, panel members consider only the information contained in the proposals; however, the standard proposal instructions allow the Service to consider other information relevant to the proposal. If panel members have information they believe important for the decision-maker to know, they should bring it to the attention of the panel chair and regional chief without discussing it with other panel members. The regional chief should consider verifying this information and whether to attempt to locate similar information about other offerors (depending on the nature of the information). Note this information cannot be presented to the panel unless the regional chief verifies the information. The regional chief should consult with the Office of the Solicitor and the WASO branch chief of planning and development to determine the validity of the additional information and whether to bring it to the attention of the panel. Factors to consider in making this determination include the reliability of the information (including the source and nature of the information and the relevance to the issues under consideration).

As a standard practice, proposal packages request offerors to submit information about violations and other adverse regulatory infractions. In some circumstances, the Service has access to regulatory agency databases to verify what an offeror reports (or fails to report). For example, the U.S. Coast Guard maintains records of marine incidents involving vessels of certain sizes. If the regional chief believes such verification would benefit a project, they should undertake that process for all offerors prior to convening the panel and then share the information with the panel.

Panel members reach consensus on the scores assigned for each selection factor that reflect the merits of the proposal in comparison to the other proposals. The panel determines the narrative

score (poor, fair, good, very good, excellent) for each subfactor, and then assigns the numeric score for the entire selection factor based on the overall merits of the entire selection factor. The narrative score will not necessarily correlate to a number score, although any discrepancy should be apparent in the narrative. Unless specifically stated in the proposal package, all subfactors carry the same weight in determining the numeric score for the selection factor. Regulations in 36 CFR Part 51 describe the possible scores for each selection factor.

During the panel deliberations, the panel chair collects drafts from panel members and provides feedback to enhance the quality and consistency of the evaluation. Panel members must comply with such feedback from the panel chair.

At the end of the evaluation process, the panel chair collects all notes, electronic media, and other extraneous material used during the deliberations of the panel. The regional chief, in consultation with the Office of the Solicitor, will decide what information to retain for the administrative record to support the evaluation and what to destroy.

The panel chair generally completes the written panel evaluation within 30 days following the adjournment of the Panel. The regional chief reviews the evaluation for policy sufficiency and submits it for legal review to the appropriate level of the Office of the Solicitor. After legal review, the panel chair transmits the written evaluation through the regional chief to the regional director for a final decision on the selection. The proposals, final panel evaluation documentation, legal review(s), and deciding official approval become part of the administrative record. As part of the formal submission to the regional director, the regional chief must describe any issues of responsiveness with any proposal and include a recommendation as to whether the regional director should find each proposal responsive or non-responsive.

When the regional office receives only one proposal in response to a prospectus, regional office employees may evaluate the proposal without convening formal meetings. All other procedures, including the preparation of a formal evaluation summary, must occur.

To reduce expenses, the regional chief may choose to conduct a panel remotely when the contract and prospectus are not complex. All other procedures, including the preparation of a formal evaluation summary, must occur. For more complex projects, the regional chief may convene a panel that works remotely for a few days and then meets to discuss the merits of the various proposals and assign narrative and numeric scores. Again, all other procedures must occur.

The regional director considers the recommendations of the panel when deciding which proposal to select. By regulation, the Service must select the responsive offer with the highest cumulative score. The regional director, however, may reject the panel's recommendation and individually review the proposals, assign different scores, and select an offeror based on his or her personal review and evaluation. The regional director must document and explain all such changes in a written decision. The Office of the Solicitor must conduct a legal review of the regional director's re-evaluation and conclusions. For WASO level contracts, when the regional director rejects a panel recommendation and personally reviews, evaluates, and scores the proposals, they must document such actions to the WASO associate director of business services, prior to submitting the recommended selection for approval.

For WASO level contracts, the WASO Program and the Washington Office of the Solicitor review the written evaluation following the completion of the regional policy and legal review. The regional chief of concessions sends the written evaluation to the WASO Program for

informal preliminary review and responds to comments from the WASO Program and the Washington Office of the Solicitor prior to the regional director submitting the document for formal review and approval.

5.3.4.1 Process for WASO-Level Contracts

The process for WASO-level contracts is as follows:

1. Regional chief completes a policy review and the appropriate level of the Office of the Solicitor completes legal review of the evaluation.
2. Regional chief submits the draft evaluation to the WASO branch chief of planning and development for informal policy review and Washington level legal review.
3. Branch chief of planning and development provides policy and legal comments to the regional chief of concessions.
4. Regional chief incorporates feedback from the WASO policy and legal review and finalizes the document.
5. Regional director submits the evaluation with a recommended selection for formal approval by the associate director of business services.
6. WASO Program prepares the approval memorandum, completes the formal policy review, and obtains formal legal review from the Office of the Solicitor.
7. WASO Program sends the approval memorandum to the regional director and regional chief of concessions.

5.3.4.2 Rejection of Proposals

As explained in 36 CFR § 51.18, circumstances may exist that require the rejection of a proposal. Regional directors must reject a proposal when they determine:

- ◆ An offeror is not a qualified person (see explanation of a qualified person below).
- ◆ An offeror is not likely to provide satisfactory service.
- ◆ A proposal is not responsive.
- ◆ A proposal is not responsive to the objectives of protecting and preserving the resources of the park and of providing necessary and appropriate services to the public at reasonable rates.

The panel does not deliberate on whether an offeror is a qualified person, but rather highlights substantial concerns in the evaluation. The regional chief, in consultation with the Office of the Solicitor, must alert the regional director to circumstances that may indicate the need to determine that an offeror is not a qualified person and that Service should reject the proposal submitted by that offeror.

Determination of a Qualified Person and Likelihood of Providing Satisfactory Service

The regulations define a “qualified person” as [a]n individual, corporation, or other legally recognized entity that the director determines has the experience and financial ability to carry out the terms of a concession contract satisfactorily. This experience and financial ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public. 36. CFR § 51.3.

Occasionally, a proposal may disclose substantial gaps in an offeror’s ability to provide the required services because of insufficient financial resources or an insufficient understanding of

operating a business that provides such services. In these circumstances, the regional chief, in consultation with the Office of the Solicitor, should recommend that the regional director determine the offeror is not a qualified person. Such recommendation must clearly explain how the offeror failed to meet the standards set out in the regulation set out above.

The determination of whether an offeror is likely to provide satisfactory service is closely related to the determination that an offeror is a qualified person. Generally, what indicates a likelihood of providing satisfactory service is experience in providing the same or similar services, and the financial ability to operate a business that provides the required services. For entities that operate or have operated as Service concessioners, reviewing Annual Operating Reports (AORs) that may be requested in the solicitation could provide additional information. For other entities, requesting similar evaluations or references also would provide useful information.

For WASO-level contracts, the regional director's formal recommendation of a selection must include a recommendation on finding whether each offeror was a qualified person. Prior to submitting the regional director's recommendation that an offeror is not a qualified person, the regional chief must consult with the WASO Program (primarily the branch chief of planning and development) to discuss the circumstances. When recommending a finding that an offeror is not a qualified person, the regional director must explain the circumstances supporting such recommendation.

Determination of Responsiveness

As explained in 36 CFR § 51.3 and the standard proposal instructions, a responsive proposal is one that:

- ◆ Is submitted timely.
- ◆ Agrees to all the minimum requirements of the draft concession contract contained in the prospectus.
- ◆ Provides the information required by the prospectus.

When determining if a proposal is responsive, the deciding official must consult with the Office of the Solicitor. The deciding official must reject any nonresponsive proposal. Although the panel does not have the authority to make a determination of responsiveness, the written evaluation may highlight information (or the lack of information) the deciding official may want to consider in determining responsiveness. In addition, if the panel chair and regional chief believe a proposal is so deficient as to prevent an effective evaluation, they may ask the deciding official to make a determination of non-responsiveness while the panel process is underway.

A proposal that inadequately responds to one or more selection factors may not result in a determination that such proposal is non-responsive. Even circumstances that warrant a low score (including assigning zero points) may not determine the responsiveness of the proposal. Likewise, a failure to submit some information requested in a prospectus may not necessarily result in determining a proposal is nonresponsive. Rather, the deciding official must determine whether the omitted information is material to an effective evaluation of the proposal under the applicable selection factor.

The determination of whether an offeror is a qualified person includes a consideration of whether a proposal is not responsive to the objectives of protecting and preserving the resources of the park and of providing necessary and appropriate services to the public at reasonable rates. For principal selection factors 1 and 2, and for secondary selection factors

focused on protecting and preserving the resources of the park and of providing necessary and appropriate services to the public at reasonable rate, very low or zero points may indicate the director should reject the proposal.

For WASO-level contracts, the regional director's formal recommendation of a selection must include a recommendation on finding whether each submitted proposal was responsive. Prior to submitting the regional director's recommendation that a proposal is non-responsive, the Region Chief must consult with the WASO Program (primarily the branch chief of planning and development) to discuss the circumstances. When recommending a finding that a proposal is nonresponsive, the regional director must explain the circumstances supporting such recommendation.

5.3.5 Selection of the Best Proposal When Two or More Proposals Receive the Same Highest Score

The regulation at 36 CFR § 51.16 requires the NPS to select the responsive proposal with the highest cumulative point score as the best proposal. If two or more responsive proposals receive the same highest point score, 36 CFR § 51.16 describes what the deciding official must consider in breaking a tie and selecting the best proposal. The deciding official must document his or her considerations in breaking the tie and selecting the best proposal.

(See the section on Exercise of Right of Preference in this chapter if the incumbent concessioner has a right of preference)

In all cases in which the deciding official must break a tie, the regional chief should consult with the WASO program chief. For WASO-level contracts, the regional director must recommend the factors to consider in breaking the tie to the WASO associate director of business services.

5.3.5.1 Process for WASO-Level Contracts

The process for WASO-level contracts is as follows:

1. Regional chief completes a policy review and the appropriate representative of the Office of the Solicitor completes legal review of the evaluation.
2. Regional chief submits the draft evaluation including the factors considered by the regional director to break the tie to the WASO branch chief of planning and development for informal policy review and to coordinate legal review at the Washington level.
3. WASO branch chief of planning and development provides policy and legal comments to the regional chief of concessions.
4. Regional chief incorporates feedback from the WASO Program informal review and finalizes the document.
5. Regional director submits the evaluation with a recommended selection and explanation of the factors considered in breaking the tie for formal approval by the associate director of business services (through the WASO program chief).

6. WASO Program prepares the approval memorandum, completes the formal policy review, and obtains formal legal review from the Office of the Solicitor.
7. WASO Program sends the approval memorandum to the regional director and regional chief of concessions.

5.3.6 Exercise of Right of Preference

Regulations at 36 CFR Part 51 Subpart E regulations explain the circumstances when an incumbent concessioner may have a right of preference to a new concession contract and the process the Service must follow. Specifically, when an incumbent with a right of preference submits a responsive proposal but does not receive the highest cumulative score, the regional director must make a written determination concluding:

- ◆ That the proposal submitted by the incumbent preferred offeror was responsive as defined by the prospectus.
- ◆ That the proposal submitted by the offeror submitting the highest scoring proposal was responsive as defined by the prospectus.
- ◆ That the proposal submitted by the offeror submitting the highest scoring proposal was the best proposal submitted.

The regional director also must identify the better terms and conditions of the highest scoring proposal as compared to the proposal submitted by the incumbent preferred offeror.

Once the regional director makes these determinations, they must send a letter to the incumbent preferred offeror that includes:

- ◆ The better terms and conditions of the highest scoring proposal.
- ◆ The right for the incumbent preferred offeror to submit an amended proposal to match the better terms and conditions of the best offer.
- ◆ The deadline by which the incumbent preferred offeror must submit the amended proposal.

Upon receipt of the amended proposal from the incumbent, the regional director must determine whether the incumbent preferred offeror submitted an amended proposal:

- ◆ Within the timeframe allowed by the regional director.
- ◆ That matches all the better terms and conditions of the highest scoring proposal.

If the regional director determines this was the case, they will select the incumbent preferred offeror for the award of the new contract.

5.3.6.1 Process for WASO-Level Contracts

The process for WASO-level contracts is as follows:

1. Regional chief completes a policy review and the appropriate representative of the Office of the Solicitor completes legal review of the determination of responsiveness and identification of the terms and conditions of the best proposal.
2. Regional chief of concessions submits the draft evaluation and the determination of responsiveness and identification of the terms of the best proposal to the WASO branch chief of planning and development for informal policy and legal review at the Washington level
3. WASO branch chief of planning and development provides policy and legal comments to the regional chief of concessions.
4. Regional chief incorporates feedback from the WASO Program's informal review and

finalizes the document.

5. Regional director submits the evaluation with the determination of responsiveness and identification of the terms of the best proposal for formal approval by the associate director of business services.
6. WASO Program prepares the approval memorandum, completes the formal policy review, and obtains formal legal review from the Office of the Solicitor.
7. WASO Program sends the approval memorandum to the regional director and regional chief of concessions.
8. The regional chief and regional director complete the process of notifying the incumbent preferred offeror as outlined above. When submitting the contract for approval, the regional director must include the determinations as to whether the incumbent preferred offeror submitted its amended proposal within the time-period allowed by the regional director, and whether the incumbent preferred offeror's amended proposal matched all the better terms and conditions of the highest scoring proposal.

(See the section on Post Selection Actions in this chapter for additional information)

5.3.7 Selection Notification

The regional director notifies the offerors of the selection in writing promptly after the deciding official signs the determination memorandum. The regional chief should coordinate an outreach plan that will allow all offerors to receive near concurrent verbal notification of the decision. The outreach plan also should include press releases and contacting interested congressional offices. For WASO level contracts, the regional chief must prepare such a plan and submit it to the associate director of business services, with the panel evaluation.

5.4 Post Selection Actions

The regional chief of concessions must complete several steps before the Service may award the contract. We summarize those steps here and explain them in more detail below.

While the panel chair completes the panel evaluation document, the regional chief coordinates the process of incorporating the terms of the better offer into the contract. Ideally, those reviewing the panel evaluation will review the contract incorporating the terms of the better offer concurrently. The contract incorporating the terms of the better offer requires the same reviews, policy and legal, as does the panel evaluation.

After the contract has undergone final policy and legal review, the regional director transmits the contract to the selected offeror to review and sign. The transmittal letter must state the amount of time the selected offeror has to review and sign the contract and return it to the regional director. Generally, a selected offeror should have 14 calendar days to review contracts with minor additions, and up to 30 calendar days to review a contract with a number of additions. When the selected offeror signs the contract, the NPS considers the contract "executed."

5.4.1 Regional Level Contracts

The Service should generate one original contract and exhibits for signature by both parties to the contract. After receiving the executed contract from the selected offeror, the regional director "awards" the contract by signing it.

5.4.2 WASO-Level Contracts

After receiving the executed contract from the selected offeror, the regional chief sends five copies (none with original signatures) to the WASO Program to prepare to submit to Congress for the 60-day notice period. The Program prepares the necessary transmittal correspondence and insures delivery to the appropriate congressional offices. This entire process generally takes about 75 days to obtain the director's signature on the transmittal letters, transmit to Congress, and allow the notice period to elapse. The Program will confirm expiration of the notice period at which time the regional director typically awards the contract as the director generally delegates the award to the regional director.

In the event the selected offeror does not sign the contract, the Service may select another responsive proposal or may cancel the prospectus and re-solicit the concession contract. Consequently, the competitive process continues until the actual award of the concession contract. All information, including the content of the executed contract, must remain confidential until the Service awards the contract.

5.4.3 Final Contract Preparation and Award

The regional chief directs the process of preparing the contract to present to the successful offeror. This includes inserting specific information about the new concessioner in several locations in the contract itself (e.g., the paragraph identifying the concessioner, the paragraph with contact information for notices, and the signature blocks). The signature blocks of both parties (the new concessioner and the United States) should include the typed name of the individual signing for each entity.

The regional office works with park employees to identify the better elements of the selected proposal into the concession contract and exhibits. This process should begin during the panel process with the park technical representative, working with the regional chief, reviewing the proposals and making notes. The regional chief presents the better elements identified to the superintendent for discussions around what to include and how to include those elements. The regional office then works with park employees to incorporate the elements of the selected proposal into the concession contract and exhibits. Except for incorporating elements of the best proposal, the final contract may not materially amend or omit terms of the contract as published in the prospectus.

The Service does not need to incorporate any terms from the highest scoring proposal into the contract. Frequently, especially with smaller contracts, an offeror may not propose any practice or procedure that alters what the draft contract requires. The better practice, however, includes the incorporation of the terms that distinguished the highest scoring proposal from the others. The highest scoring proposal may include new practices or programs that have merit, but park employees may want more involvement in its development. In those cases, the contract should require the new concessioner to propose a plan for implementation subject to the further review and approval of the Service. The contract contemplates that the Service may change the terms of the operating plan and the maintenance plan in certain circumstances. The Service may use the opportunity to include from the highest scoring proposal in future contract requirements. In this case, the regional chief must consult with the appropriate Office of the Solicitor to develop the specific terms of the new requirements.

After the regional chief reviews the contract for policy purposes, the Office of the Solicitor reviews the documents for legal sufficiency. At this stage, the review documents should show

tracked changes from the documents published as part of the prospectus and include notes identifying the location of the information in the proposal. Once approved by the Office of the Solicitor, the regional director transmits the contract to the successful offeror for execution including a copy of the documents that identify the sources of the inserted terms.

When the successful proposal provides no additional terms to incorporate into the contract, including exhibits, and when the contract does not change from the version published with the prospectus other than the insertion of identifying information about the new concessioner, the regional chief does not have to obtain additional legal review from the Office of the Solicitor. The regional chief, however, should work with the Office of the Solicitor to make sure the concessioner is correctly identified in the contract documents.

For WASO-level contracts, when the regional chief submits the contract to the Program for informal policy and legal review, the documents should show tracked changes to display the differences between the review documents and the documents published as part of the prospectus, including notes identifying the location of the information in the proposal. After incorporating comments from this informal review, the regional director submits the contract for formal approval. Once approved by the WASO associate director of business services, the regional director transmits the contract to the successful offeror for execution.

The regional director signs all regional-level contracts. Usually, as part of the formal approval process for WASO-level contracts, the regional director receives delegated authority to award WASO-level contracts. After receiving the executed contract from the new concessioner (and for WASO-level contracts, after the conclusion of the congressional notice period), the regional director signs the contract at the end of the main body of the contract and in exhibits assigning federal property to the concessioner and setting out the value of LSI. The operating and maintenance plans are not signed, but may contain effective dates to reflect changes from year to year.

5.4.3.1 Process for WASO-Level Contracts

The process for WASO-level contracts is as follows:

1. Regional chief completes a policy review and the appropriate representative of the Office of the Solicitor completes a legal review of the contract.
2. Regional chief submits the draft contract to the WASO branch chief of planning and development for informal policy review and to coordinate legal review.
3. WASO branch chief of planning and development provides policy and legal comments to the regional chief.
4. Regional director submits the contract for formal approval by the associate director of business services (through the program chief), reflecting comments from the WASO policy and legal review.
5. The Program prepares the approval memorandum, completes the formal policy review, and obtains formal legal review from the Office of the Solicitor.
6. The Program sends the signed approval memorandum to the regional director and regional chief.
7. Regional director transmits the approved contract to the selected offeror for execution, and identifies the time-period the selected offeror must review and execute the contract.
8. Upon receipt of the executed contract, the regional chief sends five copies (not with original

signatures) to the WASO Program for congressional notification.

9. The Program prepares transmittal letters, obtains the director's signature, and delivers the contracts to the appropriate congressional offices.
10. Upon expiration of the 60-day review period, the Program notifies the regional chief that the regional director may award the contract (if the director has delegated signature authority).

5.4.4 Contract Distribution

The regional chief retains the original contract including the exhibits in the region's files and distributes three copies of the awarded contract and exhibits to the concessioner, superintendent, and the WASO Program. The regional chief also transmits an electronic copy of the contract and its exhibits to the WASO Program.

5.4.5 Debriefing Policy Procedures

The 1998 Concessions Act and its implementing regulations (36 CFR Part 51) do not specifically address debriefing offerors submitting proposals. To assist potential offerors to improve future proposals, the Service, in accordance with the following procedures, provides offerors an opportunity for a post-award debriefing regarding the evaluation of an offeror's proposal. The offeror may not use the debriefing process as an opportunity to negotiate, amend, supplement, or reevaluate any proposal.

5.4.5.1 Responsibility

Regional chiefs have the primary responsibility for responding to requests for debriefings, and for WASO-level contracts, must advise the WASO branch chief of planning and development prior to providing either a written or oral debriefing.

5.4.5.2 Disclosure of Information

Disclosure of information related to aspects of the selection decision prior to contract award might adversely affect the contract award process. Even after contract award, undue disclosure of information concerning the selection decision and the contract award may adversely affect competition for other concession contracts and risk violation of law or agency regulation. For example, information submitted by offerors in response to a concession contract solicitation, may contain commercial or financial information protected by applicable law from public disclosure. Consequently, the Service must carefully consider what to disclose when preparing any debriefing.

Providing a debriefing does not affect the ability of an entity to request documents relating to the solicitation and selection process under FOIA. The Service must process all FOIA requests in accordance with FOIA procedures with the assistance of the applicable FOIA officer.

5.4.5.3 Procedures

The standard proposal instructions will provide information about the availability of post-award debriefings. At the discretion of the regional chief of CS, prospectuses may provide for either an oral or written debriefing, not both. The proposal instructions in each prospectus must identify the debriefing option provided.

The Service responds only to written requests for debriefings and provides written and oral debriefings.

In general, the regional chiefs take the following steps:

1. Retain copies of all written notices and correspondence from an offeror regarding a requested debriefing.
2. Prepare a debriefing using the evaluation document as the source of information provided.
3. Prior to any oral debriefing, provide an electronic copy of the awarded contract to the offeror requesting the debriefing.
4. Ensure the presence of another NPS employee during every oral debriefing.
5. Retain copies of all written debriefings and notes from all oral debriefings.

5.4.5.4 Debriefing Requests

Offerors may request a post-award debriefing within 14 calendar days of receiving a Notification of Selection/Non-Selection letter. In special circumstances, the Service, in its discretion, may agree to provide a debriefing when the request is submitted after this deadline.

The regional chief must consult with the Office of the Solicitor prior to finalizing any written debriefing, and on specific legal concerns regarding a planned oral debriefing.

An example of a post-award debriefing letter is available from the WASO Program. The regional chief generally should follow the format provided in the example for all debriefing letters.

If an offeror submits a written request for a post-award debriefing within 14 calendar days of receiving a Notification of Selection/Non-Selection letter, the Service will make every effort to debrief the offeror as soon as practicable after contract award.

Content of Post-Award Debriefings

Post-award debriefings will include:

- ◆ The number and identity of offerors (including the selected offeror) and the total scores each received.
- ◆ A general discussion of the quality of the debriefed offeror's proposal based on the selection factors included in the applicable prospectus.
- ◆ The point scores assigned under the applicable selection factors of the debriefed offeror's proposal.
- ◆ A description of the selection evaluation process.

Post-award debriefings will not include:

- ◆ The specific content of any proposal other than the offeror receiving the debriefing.
- ◆ A general comparison of the quality of the other proposals.
- ◆ Any information prohibited from disclosure by law, including, without limitation, commercial and financial information that is privileged or confidential.

As the debriefing focuses only on the content of the debriefed offeror's proposal and does not disclose information about any other proposal, the regional chief may discuss confidential proprietary information the debriefed offeror submitted. Providing the offeror with the awarded concession contract prior to the debriefing will afford the offeror the opportunity to understand the elements of the better proposal incorporated into the awarded contract.

5.4.6 Administrative Record

The regional office maintains the administrative record for the solicitation and award of

concession contracts.

(See Chapter 2 for additional information on administrative records)

5.4.7 Appeals to the Selection of a Best Offer for a Concession Contract

The Service provides no process for an unsuccessful offeror to file an administrative appeal of the decision to select another offeror or cancel a prospectus.

5.5 Temporary Contracts

As part of the 1998 Act, the Service may award a temporary contract with a term not to exceed three years. The Service cannot extend temporary contracts beyond the three years.

The need to consider a temporary concession contract may arise in different situations. Sometimes an incumbent concessioner will not agree to a continuation or extension beyond the original term of the concession contract. In other circumstances, the Service may have terminated a concessioner for contractual reasons. In these and similar situations, the Service often does not have sufficient time to develop and solicit a prospectus and award a new long-term concession contract. To avoid the interruption of visitor services, the Service may award, without public solicitation, a temporary concession contract.

5.5.1 Limitations of a Temporary Contract

The Service may award temporary contracts for a term **not to exceed** three years. Temporary contracts must include the same requirements of a fully solicited long-term concession contract and may only be awarded to a qualified person with the managerial experience and financial ability to carry out the terms of the contract. Temporary contracts must provide the concessioner with a reasonable opportunity to make a net profit considering the capital invested and obligations of the contract. Concessioners cannot obtain a right of preference under a temporary contract.

5.5.2 Steps for Awarding a Temporary Contract

Only the director, deputy director, or associate director of business services, may approve the award of a temporary concession contract, including both the contents of the contract (including its exhibits) and the entity that will become the temporary concessioner. Generally, the Service must publish a notice of its intent to award a temporary contract at least 30 days prior to the award of the contract.

The regional chief should consult with the WASO Program as soon as they recognize a situation when the Service likely will need to use a temporary contract to avoid the interruption of visitor services. This particularly is important to enable the Service to publish the Federal Register notice timely.

The ability to award a temporary concession contract requires three distinct approvals. The first is the authority to use a temporary contract, the second is the selected concessioner, and the third is the content of the temporary contract. Frequently, all three approvals occur simultaneously.

The only justification for awarding a temporary contract is to avoid an interruption of visitor services. Consequently, the request to approve such use must include a discussion of the other

alternatives considered to avoid any interruption of visitor services (e.g., sale and transfer of an existing contract to another qualified person, issuance of a CUA, issuance of a prospectus for a long-term contract). Such a request also must include a financial analysis demonstrating the temporary contract provides a reasonable opportunity for a net profit considering the capital invested and obligations of the contract. When seeking approval of a potential concessioner, the request must describe the qualifications, including the financial ability of the recommended concessioner. If the regional chief has not yet identified the qualified person to serve as the concessioner, the request must state that the regional director will, in the future, identify that individual or entity and submit the recommended selection of that concessioner for approval with the determination that it is a qualified person per 36 CFR §51.3. Finally, if the regional director seeks a waiver of the requirement to publish the Federal Register notice because of an emergency, the request must explain the basis for this request. The regional director must send the recommendation through the program chief to the associate director of business services. In addition to the request for approval, the regional director must submit the contract documents proposed for use and the ROD and determination to award. Typically, the only legal review of a temporary contract occurs at the Washington level.

Once the associate director of business services, approves the temporary contract and selection of the temporary concessioner, the regional chief sends the contract to the future concessioner to discuss the terms of the contract, including its exhibits. For the most part, the regional chief should avoid discussing revisions to the standard contract language, but may agree to changes in operating and maintenance plans. The regional director must submit any changes in standard contract language and *substantive* changes to operating and maintenance requirements for additional approval by the WASO associate director of business services.

Even though the use of a temporary contract allows the award of a contract without competition, on occasion the regional chief may want to solicit interest in the opportunity. The regional director must first seek and obtain the approval of the WASO associate director of business services, to enter into a temporary contract. After that, the regional chief prepares a Request for Qualifications (RFQ) to solicit information from potential bidders about their experience providing the services, and their financial capacity to start and sustain the operations. The regional chief must publish notice of the RFQ on fedbizopps.gov, post the RFQ on the WASO [Program's website](#), and otherwise advertise it to make interested parties aware of the opportunity. Typically, the response period is fairly short, usually 2 to 3 weeks. The regional chief facilitates the review of the submitted information and develops a recommendation.

5.5.2.1 RFQ Process

The WASO RFQ process is as follows:

1. Regional chief explores alternatives to temporary contract.
2. Regional chief identifies the need for a temporary contract.
3. Regional chief explores interest in providing the services and determines whether to issue a RFQ.
4. Regional chief submits to the WASO Program for informal policy and legal review, a draft request memorandum, a briefing paper explaining the alternatives to a temporary contract and the reasons supporting the selection of the entity recommended for award of the temporary contract (or the qualifications sought through an RFQ), and draft contract

documents.

5. WASO Program reviews the drafts, obtains informal legal review, and sends comments to the regional chief.
6. Regional director formally requests approval to award a temporary contract including the briefing statement and the contract documents reflecting WASO comments.
7. WASO Program prepares an approval memorandum, obtains legal review, and sends approval memorandum to the regional director.
8. WASO Program publishes a Federal Register notice.
9. Regional director awards the temporary contract as delegated.
10. When using the RFQ process, the regional chief advertises the RFQ as explained above, selects an appropriate operator, and submits that selection for approval by the WASO associate director of business services. Before advertising the RFQ, the regional director must have an approved temporary concession contract to include in the RFQ.

5.6 Sole Source Long-term Contracts

Only the NPS director, with the prior written approval of the Secretary or Assistant Secretary for FWP, may award a concession contract without competition (other than a temporary contract) in extraordinary circumstances where compelling and equitable considerations require the award of a concession contract to a particular qualified person in the public interest.

When providing this authority, Congress established a difficult burden to justify the award of a long-term contract without competition. The legislative history of this section describes two situations where the Service could consider such an award. One example is awarding such a contract for a single contract term when a new park unit or land is added to the National Park System and an existing business is providing visitor services the Service wants to continue. Other circumstances include when a concessioner operating as a sole proprietor dies and the surviving spouse wishes, and is qualified, to continue the business.

Whenever a regional director and regional chief believe a situation exists that supports the award of a contract of this nature, they should consult with the WASO Program office to determine how to proceed. Ultimately, the regional director must submit a written request for approval of the contract with a thorough explanation of the situation justifying the award of a long-term sole source contract. This justification requires the legal review and approval of the Office of the Solicitor advising that regional office. The request also must include a draft contract for approval.

5.6.1 Process for Consideration of Sole Source Long-Term Contracts:

The process is as follows:

1. Regional chief identifies the need for a long-term sole source contract.
2. Regional chief submits to the WASO Program for informal policy and legal review, a draft request memorandum, a briefing paper explaining the justification for a long-term sole source contract following the statutory requirements.
3. WASO Program reviews the drafts, obtains informal legal review, and sends comments to the regional chief.
4. Regional director formally requests approval to award the contract, including the briefing

statement and the contract documents reflecting WASO comments.

5. WASO Program prepares approval memorandum, obtains legal review, and submits the request to the Secretary or Assistant Secretary FWP.
6. WASO Program sends approval to regional director and regional chief.
7. WASO Program publishes Federal Register notice and submits the document to Congress (60-day period for each process, which may run concurrently).
8. Service awards contract (usually delegated to the regional director).

Chapter 6: Contract Management

6.2 Introduction

The 1998 Law authorizes the Secretary of the Interior to issue concession contracts for public accommodations, facilities, and services “only under carefully controlled safeguards against unregulated and indiscriminate use.” Chapter 6 describes the policies and programs whereby the NPS oversees and administers concessioner operations and concession contracts to achieve this mandate. This includes, managing contract changes and documentation, setting and monitoring concessioner insurance, overseeing concessioner operations and performance, approving concessioner rates, and addressing other contract management matters. This chapter includes basic information on several topics within the overall contract management framework, particularly the Concessioner Review Program, financial management and asset management. Details on these specialized areas of concessioner oversight are provided in Chapter 7, Chapter 8, and Chapter 10, respectively.

6.3 Managing Contract Changes

Concession contract management starts with contract execution and extends to contract termination. This section describes the procedures and documentation requirements associated with the various contract management actions that may occur during this lifecycle of the contract.

6.3.1 Contract Transition and New Contract Implementation

Once a new contract is executed, the first contract management step is contract transition and implementation. This step typically involves closing out an old contract and implementing a new one. In some cases, new contracts are implemented where there were none before, or an authorization is shifting from a CUA to a concession contract.

An orderly concession contract transition helps avoid interruption of visitor services, helps protect the park legally and financially, ensures proper close-out of the existing contract and start-up of the new one, and sets the tone for ongoing contract management and operations. Both the incumbent and the incoming concessioner are participants in the transition process.

The standard concession contract includes a contract exhibit in which concessioner requirements at the end of the contract are defined (see exhibit J for category I contract, exhibit G for category II, and exhibit E for category III contract). Older contracts may not include this exhibit. Important steps for effective contract transition are outlined below. Additional requirements specific to other contract management functions such as asset and financial management are addressed in other applicable chapters of this RM.

6.3.1.1 Create an Inventory of All Obligations under the New and Old Contracts

The park should begin by listing all the contractual requirements imposed upon the outgoing and incoming concessioner including those in any contract transition exhibits. Additional information and examples are available in the NPS Commercial Services Concession Specialist Toolkit on the Program’s SharePoint [site](#).

6.3.1.2 Analyze Potential Issues, Expectations, and Risks concerning the Incoming and Outgoing Concessioner

The park should assess contract transition scheduling and other issues that may arise, along

with potential impacts and how the park will respond. This may include issues with the outgoing concessioner not cooperating during contract transition even though the contract requires them to do so. Conversely, the new concessioner may have made commitments such as bringing facilities and operations online or may have taken other actions that could delay transition actions and the ability to provide services.

6.3.1.3 Develop a Formal Transition Plan and Schedule

The park should use the inventory and analysis to develop and document a clear contract transition plan and share this plan with both the outgoing and incoming concessioner. To the extent possible, it is best to develop this plan in collaboration with both the outgoing and the incoming concessioners. Park divisions involved in or affected by the concession operation transition should also be engaged. An outline that covers key topics to be included in the plan is available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

6.3.1.4 Implement the Transition Plan

Execute the transition plan as early as possible. Transitioning is a dynamic process, and the park should be ready to adjust the transition plan to address issues as they arise.

Perhaps most important to the transition process is meeting with the new concessioner to discuss new contract requirements and evaluation standards. The new concessioner may be the incumbent concessioner, a former concessioner, or an individual or an organization with no concessioner experience. It is important for them to understand the obligations under the new contract. Even if the incumbent concessioner won the contract, the concessions operations will be operating under the new contract framework and operational changes will be implemented. The NPS should meet with the new concessioner to review the contract and its requirements including:

- ◆ Services requirements
- ◆ Required plans and due dates
- ◆ Required reports and due dates
- ◆ Operating hours
- ◆ Reservation systems
- ◆ Asset management obligations
- ◆ Maintenance reserves
- ◆ CFIP/LSI
- ◆ Personal Property transfer (if applicable)
- ◆ Operational evaluation standards

The superintendent's involvement in some of these meetings demonstrates park leadership commitment and is strongly recommended. These meetings should also introduce other park management employees who may be involved in the oversight of concession operations. Such employees may include:

- ◆ Deputy superintendent
- ◆ Division/branch chiefs (e.g., facilities, interpretation, and natural resources)
- ◆ Park safety officer

- ◆ Regional public health officer
- ◆ Park sanitarian.

6.3.1.5 Begin New Contract Operations and Monitor Contract Compliance

After the term of the new contract begins, the park concession management personnel should monitor progress to ensure:

- ◆ Operations are implemented in accordance with the contract.
- ◆ Any problems are quickly addressed and corrected before becoming institutionalized.

A schedule of these requirements can be developed to assist in monitoring these actions against contractual timelines. Relevant templates and additional guidance are available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

When there is a problem with the concessioner meeting particular contract obligations, the park must determine the cause. Problems may include simple failure to perform by the concessioner, or may be caused by park delays or other factors that were not considered.

Problems may also arise when the concessioner's elements of a better offer are found to be too aggressive and cannot be achieved as proposed. In this case, the park will consider off-setting actions the concessioner can take to compensate the government for failure to meet these expectations. The park must consult with the region in these situations.

Timely and thorough completion of evaluations through the Concessioner Review Program is also an important monitoring method that should start right from the start of the contract.

6.3.2 Contract Modification/Amendment

Modifications to contracts may be executed during the term of the contract. Such modifications should not substantially change the financial basis of the contract or type of services being provided and must be consistent with current laws, regulations, and NPS policies.

Common contract modifications include:

- ◆ Changes to exhibits such as changes in the assignment of government-owned real or personal property.
- ◆ Changes to insurance replacement values (IRVs) for real property.
- ◆ Updates to the operating plan or maintenance plan.

(See the section on Contract Document Management and other relevant sections in this chapter for additional information on the management of these exhibits)

Less common modifications may include changes to contract category, franchise fee, or standard contract language. Modifications may also include additions, removals, changes, or additions of services to applicable to address changes visitor service needs, resource protection or other factors that arise during the term of the contract. Other modifications may be authorized by the contract.

Concession contracts must be modified by written amendment. Exceptions include changes to operating and maintenance plans and IRV updates.

Amendments must be approved at the region or WASO level in accordance with the Delegations of Authority as addressed in Chapter 2. A park must consult with its regional CS

office to ensure that any modification is properly planned, reviewed, accounted for in the contract, executed and managed.

6.3.3 Contract Extension/Continuation

Concession contracts under the 1998 Act may be extended to avoid an interruption in visitor services up to an aggregate of three years in accordance with 36 CFR 51.23. Contracts issued under the 1965 Act may be continued indefinitely. Parks must consult with their regional office to ensure the contract extension or continuation is properly executed and complies with review, approval, and document management requirements. Extensions and continuations are subject to official approval in accordance with the Delegations of Authority in Chapter 2.

6.3.4 Contract Termination

Contract termination is the permanent discontinuation of a concession contract. The termination process can be an expensive, time consuming and politically sensitive and should be an action of last resort. Regional or WASO approval is required for termination actions in accordance with the Delegations of Authority addressed in Chapter 2.

6.3.4.1 Basis for Contract Termination

In accordance with 36 CFR 51.74, the NPS may terminate a concession contract in whole or part for the following reasons:

- ◆ **To protect park visitors** - This may include but need not be limited to unsanitary conditions, poorly maintained concession facilities, equipment, and poor services that constitute a hazard. Hazards such as fire, geological or water-related dangers may be unrelated to the actual concession operation but still make it advisable to terminate the contract to protect visitors.
- ◆ **To protect, conserve, and preserve park resources** - This may include but need not be limited to destruction of park flora or fauna or intrusions on wildlife habitat by the concession activities, other types of environmental impacts. The impacts may also be due to ecological issues outside the NPS or concessioner's control.
- ◆ **To limit visitor services in the park to those that are necessary and appropriate** – This may include but need not be limited to changes in park visitor service requirements based on park planning, provision of new visitor services in locations outside the park, or other factors.
- ◆ **Due to bankruptcy or insolvency** - The concession contract may be terminated in the event of a bankruptcy filing by or against the concessioner, insolvency of the concessioner, or other similar situations as outlined in the contract.
- ◆ **To address a default of contract** - The concession contract may also be terminated due to default if the director determines that the concessioner has materially breached any requirements of the contract. This includes but need not be limited to:
 - Failure by the concessioner to provide the visitor services required under the contract or operate those visitor services to the satisfaction of the director.
 - Nonpayment of the established franchise fee.
 - Lack of or noncompliance with an Environmental Management Program (EMP).
 - Failure to duly expend funds from RMR.
 - Lack of compliance with applicable laws.

Various factors must be carefully weighed before deciding on a termination action due to default. The severity and type of the contract breach(es) is one factor. For example, deficiency in

meeting individual service or program standards identified through operational evaluations is generally not significant enough to constitute a breach for which termination would be considered. However, failure to meet a single standard such as a critical risk management requirement may be of such significance that it may be considered a breach for which termination would be considered. Breaches of an administrative nature that do not have a direct impact on visitor services may also be considered less important. Frequency of a deficiency or deficiencies may also be a factor that should be weighed before deciding on a termination action due to default. While an individual breach may not be significant enough to warrant termination, repeated breaches of the same nature over a period of time or multiple breaches, each of a different nature in the same timeframe, may be cause for considering such an action.

The performance of the concessioner in conducting timely corrective action to cure breaches must also be considered. In accordance with the standard contract, concessioners may be afforded timeframes to mitigate the default conditions or causes of the breach of contract. If the nature of the breach permits, concessioners must correct monetary breaches within 15 days of notification of the breach. If the nature of the breach permits, concessioners have 30 days after notification to correct nonmonetary breaches or provide plan satisfactory to the NPS to cure the breach over time. Failure by the concessioner to cure a breach within the specified period of time is cause for termination. Some breaches may be so significant, that the nature of the breach does not permit the opportunity for a corrective action and immediate termination is appropriate.

Finally, the AOR provides cumulative yearly performance information. A concessioner with an AOR of (a) unsatisfactory for a given year or (b) marginal for 2 consecutive years is considered in default and may be terminated.

(See Chapter 7 for additional information on the Concessioner Review Program, determining deficiencies, and scoring the AOR)

6.3.4.2 Process for Breach of Contract Notice and Termination of Concession Contract

As terminations have substantial time and legal ramifications that may include court litigation, it is critical to obtain appropriate consultation, keep detailed documentation, and properly follow procedure.

First, the park must develop and maintain a clear administrative file documenting why the concessioner is in default or other basis for termination of the contract. It is important to consult the regional chief of concessions as early as possible to:

- ◆ Assist the park in evaluating the situation.
- ◆ Help identify possible alternatives to a termination action.
- ◆ Advise on the development of the administrative record.

Upon arriving at a decision to terminate, the park must develop a complete plan for implementing the termination action. The plan should cover:

- ◆ How impacts on visitor services will be addressed.
- ◆ Communications.
- ◆ Political considerations
- ◆ Program funding requirements.

- ◆ Financial liabilities to the government.

Financial obligations may, depending upon the terms of the contract, include the payment of compensation for LSI. There may also be program expenses for appraisals, studies, and investments in facilities connected with the termination actions and placement of operations under new management.

The regional chief of concessions and regional solicitor must review the plan for executing the termination. The region should also notify and involve the WASO Office as appropriate, based on the delegations of authority addressed in Chapter 2.

The NPS must advise the concessioner in writing when a termination is under consideration. The notification must describe the basis for the termination including the nature of the breach if applicable, and the corrective action and timeline to address the breach. The regional director or a WASO official must approve (i.e., sign) this correspondence as appropriate, based on the delegations of authority. The process for issuing such notice for WASO-level contracts is as follows:

1. Regional chief consults with the park and prepares the notification letter and the appropriate representative of the Office of the Solicitor completes a legal review of the document.
2. Regional chief submits the draft notification letter to the WASO Program Chief for Program and WASO Solicitor review.
3. The WASO Program Chief coordinates reviews of the notification letter and provides comments to the regional chief.
4. The regional chief revises the letter reflecting comments from the WASO policy and legal reviews and the regional director submits the finalized notification letter for signature by the associate director of business services (through the program chief).
5. The Program sends the signed notification letter to the regional director and regional chief.
6. Regional director transmits the notification letter to the concessioner.

The process for regional-level contracts resides with the region although WASO CS may be consulted. Note that while the set of document management steps described above is particular to notification of potential termination, they generally apply for the variety of contract document management and approval activities for WASO-level contracts (e.g., *contract termination, assignments and encumbrances, etc.*).

The Service must review any corrective action the concessioner takes, if any. In the event that the concessioner completes the corrective action within the specified timeframes, and the corrective action is completed to the satisfaction of the Service, the regional director or WASO official as applicable, must provide the concessioner with a letter of notice, indicating that the breach was addressed and outlining any additional actions to avoid future breach. The notification process for WASO-level contracts should follow the same procedures as the original notice.

In the event that corrective action is not timely or sufficient, final termination can proceed.

The appropriate NPS authority must issue a letter of termination to the concessioner based upon the delegation level. The letter must describe the basis for the termination (e.g., nature of the default or other reason) and if applicable, information on failure to cure the breach, comply with timelines, and financial or other actions the concessioner must take. Again, the final

termination notice process for WASO-level contracts should follow the same procedures as the original notice.

As noted above, in circumstances where the termination action is necessary to protect park visitors or protect, conserve, or preserve park resources; limit services to those that are necessary or appropriate; or otherwise address a significant time-sensitive issue, there may be no option for the concessioner to cure its contract breach and the termination action may proceed without a corrective action step.

Upon termination, the concessioner is obligated to submit a financial report that is updated through its final date of operation and pay all outstanding franchise fees and other debts due and owing to the United States. Every reasonable effort must be made to collect on the monies that are due. Since the United States holds the first lien on the concessioner's assets, any outstanding amount owed the United States should be considered in the final disposition of the concessioner's assets as follows:

- ◆ If sold to a successor concessioner, responsibilities for any debts to the United States must be satisfied in the sales agreement.
- ◆ If attached or repossessed by a creditor, the United States has the right of first lien and prior approval.
- ◆ If compensation is owed the concessioner for LSI or PI, any amounts owed to the United States should be deducted from such compensation before paid.

6.3.5 Contract Suspension

A contract may be temporarily suspended at any time, in whole or part to protect park visitors; and to protect, conserve, and preserve park resources. The difference between a concession contract termination and a suspension is that a termination is of a permanent nature, while a suspension is generally for a short period of time until the situation is corrected.

The same steps outlined for contract termination must be followed when a concession contract suspension is considered and executed.

In the event that the need to protect visitors or resources is a result of a contract breach, the suspension may be used as an interim measure while the concessioner cures the breach. If the concessioner's cure action is not timely or to the satisfaction of the Service, the Service may proceed with the termination. If appropriate (e.g., good-faith progress is being made but is not yet complete), the Service may extend the suspension while the cure is satisfactorily completed. The concessioner must receive appropriate notice in these circumstances.

Under a suspension of operations, no compensation shall be due the concessioner. This includes, but is not limited to, compensation for losses based on lost income, profit, or expenditures necessary.

6.3.6 Assignments and Encumbrances

This section describes review, approval and management procedures related to concessioner assignment and encumbrance transactions that may occur during the term of a contract.

6.3.6.1 Background and Authorities for Assignments and Encumbrances

In accordance with 36 CFR 51, concessioners may not assign (i.e., sell, convey, grant, contract for or otherwise transfer) or encumber (i.e., pledge, mortgage, or otherwise provide as a security interest for any purpose) the following without NPS review and approval:

- ◆ Concession contracts.
- ◆ Rights to operate under or to manage the performance of a concession as subconcessioner or otherwise.
- ◆ Controlling interest in a concessioner or a concession contract (controlling interest for the purpose of assignment and encumbrance transactions is defined at 36 CFR 51.84).
- ◆ Any LSI obtained under a concession contract.

The purpose of the NPS review and approval process of assignment and encumbrance transactions is to ensure that the concessioner will be in a legal, managerial, and financial position to meet the terms of the contract and provide the appropriate services to the public. Some of these transactions have the effect of introducing a new operator or structurally changing the operator's business. As a result, when conducting these reviews and approvals, the NPS needs to take similar care to that taken when reviewing the documents received from prospective concessioners responding to the NPS's prospectus requirements. Assignment and encumbrance transactions that occur without NPS approval constitute a material breach of the contract and are cause for immediate termination.

The review and approval requirements for assignment and encumbrance transactions are defined in 36 CFR 51.84 through 36 CFR 51.97. Specific determinations that the NPS must make prior to approving these transactions are defined in 36 CFR 51.87. These determinations include items such as whether assignment or encumbrance:

- ◆ Is to a qualified person,
- ◆ Would not have an adverse impact on the protection, conservation or preservation of the park resources or the provision of necessary and appropriate visitor services at reasonable rates.

Responsibilities for conducting such review and approval rests with the region and WASO in accordance with the delegations of authority in Chapter 2. These review and approval procedures are described in more detail in this section.

6.3.6.2 Business and Transaction Types

The business-related details of assignment and encumbrance transactions can be complex. The Service routinely contracts with sole proprietorship, partnerships, and corporations. Entities with these business structures may engage in transactions such as asset purchase and stock purchases that may qualify as assignments under 36 CFR 51. Additional background and guidance on these structures and transaction types is available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

6.3.6.3 Assignment and Encumbrances Procedures

Assignment and encumbrance processing procedures involve three principle elements:

- ◆ Obtaining and reviewing of the transaction application.
- ◆ Approving or denying the transaction.
- ◆ Transition following the transaction.

Obtaining and Reviewing the Transaction Application

The applicant must notify the park or region of a requested transaction approval action. Upon receipt of the request, the region should send the applicant a transition approval request package containing instructions on the transaction process and requirements. Relevant

templates and additional guidance are available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

The request for approval package generally must include the following as listed in 36 CFR 51.91:

- ◆ All instruments proposed to implement the transaction such as:
 - The sales agreement.
 - Any security or warranty agreements.
 - Loan documents.
 - Articles of Incorporation and by-laws of buyer's entity.
 - Corporate resolution authorizing the proposed transaction.
- ◆ An opinion of counsel from the prospective transferor to the effect that the transaction is lawful under all applicable federal and state laws.
- ◆ A narrative description of the proposed transaction.
- ◆ A statement as to the existence of any litigation related to the proposed transaction.
- ◆ A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee. This may include items such as:
 - Third party personal and business references; and
 - Letters of commitment from prospective lenders.
- ◆ Prospective financial statements (proformas).
- ◆ 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.
- ◆ A description of the basis for all allocations and ownership of all assets
- ◆ Such other information as may be required for the NPS to assess the transaction.

The transaction approval request package must be received and reviewed by the regional concession office which must prepare a findings and determination document. The determination must consider the criteria for transaction approval outlined in 36 CFR 51.87. A sample findings and determination document is available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#). The regional solicitor must complete a formal review of the transaction approval request package and associated findings and determination. The region may need to request additional information from the applicant as part of this review and determination process. WASO Program review and determination, WASO solicitor consultation, is also necessary for certain transactions based upon the delegations of authority in Chapter 2.

The concession parties involved (e.g., buyers and sellers) are usually represented throughout the entire transaction by lawyers who draw up the necessary documents. For this reason, it is most important that the regional solicitor and WASO solicitor (if applicable) be consulted for these transactions.

Approval and Transaction Documents

Upon completion of reviews, the regional chief of concessions must prepare a cover memorandum and a findings and approval/denial document for signature by the appropriate official. Depending upon delegations, approval may end with the regional director or include

WASO officials. A sample findings and approval document is available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

Once the NPS internally approves the action through the findings and approval document, the transaction must be completed with the applicants. In the case of an assignment transaction, the transaction documentation will consist of the 3-part assignment, acceptance, and approval (AAA) document, which is executed by the seller and buyer, and then appropriate NPS official. The approval document for a stock purchase consists of a letter to the current concessioner with a copy to the proposed purchaser of the current concessioner's stock. The document must include spaces for the signature of both parties with instructions to return the document after execution. The letter must indicate an effective date for the transfer. In the case of an encumbrance transaction, the transaction documentation is a consent to encumbrance document executed by the concession applicant and then the NPS approving official. The process for obtaining WASO-level reviews and approvals must comply with the delegations of authority in Chapter 2 and should generally follow the steps outlined in Section 6.1.4.2 concerning regional and WASO document management.

The transaction documentation (i.e., AAA, stock purchase letter, consent to encumbrance) includes a summary of the transaction and any points that need clarification or emphasis, an approval statement and lists conditions and places for signatures by the parties involved signifying their acceptance of the conditions. Templates with standard and required language for these three transaction documents are available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

Transition Following Transaction

All assignment and encumbrance documentation should be properly filed as part of the contract administrative record in accordance with applicable document control requirements as outlined later in this chapter.

Assignment transactions may involve a change in operator. A change in operator can be similar to a contract transition that occurs following the award of a new contract. The new operator may not be familiar with the terms and conditions of operating under the concession contract. A contract transition process should be implemented to ensure the continuation of services by the new operator as smoothly as possible.

(See the section on Managing Contract Changes in this chapter for additional information)

Transactions Involving Non-Controlling Interest

Operators may engage in transactions that do not meet one of the criteria outlined in 36 CFR 51.84 including transactions that are not of a controlling interest. The following are a few examples of transactions involving a non-controlling interest:

1. The Board of Directors of XYZ Corporation, Inc. decided that the "Z" portion of the company's name carried connotations unacceptable to some members of the public. The name was changed to XY Corporation, Inc.
2. John Smith, a sole proprietor, became aware of certain tax advantages related to subchapter "S" corporations. Thus, John Smith incorporated his business under the name of Recreation World, Inc.

3. On the death of Mr. Smith of the Smith and Jones partnership, the probate courts awarded Mrs. Smith his interest in the business. A new partnership agreement was executed making Mrs. Smith and Mr. Jones partners in the business.

As a practical matter, NPS involvement in all concession transactions that do not meet the criteria set forth in 36 CFR 51.84 above can be challenging. However, the NPS still has an obligation to ensure transactions that are conducted are appropriate and will not adversely impact the operator's ability to deliver services and protect park resources. As a result, different, simpler procedures are defined for transitions that do not meet the criteria.

Prior to a transfer of a non-controlling interest, the concessioner must notify the regional CS office in writing and include information as to why the transfer is not a one involving a controlling interest. The concessioner must also submit identification of the transferee. The NPS regional CS office will review the concessioner's notification and consult with the regional solicitor. If in agreement the regional CS office will notify the regional director, and the regional director will advise the concessioner in writing that the NPS approves the transaction. Failure by the concessioner to notify the director of any proposed transfer of a non-controlling interest may make the proposed transfer null and void and may constitute a material breach of the contract. The Service retains the right to withhold approval of a proposed transfer regardless of the size of the interest. Templates for such approvals are available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

6.3.7 Temporary Contracts

Execution of a temporary contract may be required to address a particular visitor service need at a park as a result of the NPS's inability to be able to extend or continue a contract due to a contract termination or for other reasons.

(See Chapter 4 for additional information on the process for temporary contracts)

6.3.8 Temporary Shutdowns of Concession Operations

Concessioners may be required to cease operations temporarily for various reasons, including administrative closure of the park, closure of the park or part of the park due to natural disasters, or other extraordinary events.

6.3.8.1 Notification and Communication for Shutdowns and Emergencies

WASO is responsible for notifying regions and parks of servicewide administrative closures and procedures in accordance with established communication channels. WASO CS may assist in these communications. Regional and park closure notifications should be made through established regional and park communication channels.

Park superintendents are responsible for communicating with the park concessioner on any shutdown requirements. The park should notify the concessioner as soon as possible to enable them to initiate necessary closure actions. When initiating closure activities, parks should consider that concessioners operating in backcountry parks, where unique logistical and safety concerns exist, may require additional time and effort to coordinate an appropriate response.

6.3.8.2 Contract Considerations for Shutdowns and Emergencies

Relief from contractual requirements such as alterations in the provision of services or other

obligations as a result of shutdowns, is addressed on a case-by-case basis. Such relief depends on the scope of the incident, consideration of the specific circumstances of the event, and legal implications. Any actions must be conducted in accordance with NPS policy and delegations of authority. Parks must consult with their regional office to ensure that actions taken are appropriate and consistent. Actions requiring contract modifications through amendment must be conducted in accordance with procedures for managing the contract and contract exhibits described below.

6.4 Contract Document Management

Effective management of concession contract documentation is critical to ensure compliance with NPS legal and policy requirements and provides effective contract management, protection of park resources, and quality visitor services.

Service-generated contract management documents include:

- ◆ Contracts and associated exhibits such as the operating and maintenance plans.
- ◆ Concessioner Review Program records.
- ◆ Concession Rate Administration records
- ◆ Correspondence and other contract management documentation.

The actual documents needed for each park and concession vary based on operation and contract requirements.

Document management of key contract exhibits are described in this section.

(See Chapter 2 for additional information on managing these documents as administrative records)

6.4.1 Managing the Contract and Contract Exhibits

The concession contract is based upon standard contract language. Changes to the concession contract during its term require an amendment and are subject to regional or WASO review and approval in accordance with the Delegations of Authority as addressed in Chapter 2 and as discussed later in this section.

A number of exhibits to the concession contract may be modified during the term of the contract. These include operating plans, maintenance plans, assigned land, real property assignments, and assigned government personal property. Parks should consult with their regional offices to determine when to obtain solicitor review for substantial changes to exhibits that may affect the scope of the concession contract, impact the contract financials, and potentially require a formal amendment to the contract.

As part of a sound document management system, revisions to concession contract exhibits should be dated to avoid confusion among various versions. Revised exhibits must be transmitted to the concessioner in a timely manner and in consideration of seasonality and other factors. Electronic and hard copies of any revised exhibits must be retained in park files in accordance with the park file management structure and the Service record retention schedule. Electronic copies must be sent to the region. The region must send the revised files to WASO to upload to the electronic contracts file. Additional descriptions and details on the management of these documents are provided in the following subsections.

6.5 Operating Plan

An operating plan is required for all concession contracts. It defines the concessioner's operational responsibilities for meeting Service and park-specific operational objectives.

Operating plans are first prepared during the prospectus development process and a draft is included in the prospectus. After award of the contract, the Service finalizes the operating plan including the incorporation of applicable elements of the best offer.

(See Chapter 4 for additional information on prospectus development)

The operating plan is not a static document. Park employees must review the plan at least annually and update it as needed. Updates should address items such as NPS policy changes and operational changes such as facility opening and closing schedules, staffing changes, or modification of reporting time requirements. However, operating plan changes cannot materially change the terms of the contract. For example, operating plan revisions cannot change required services or service classification or significantly change hours of operation or operating season. When questions on operating plan changes arise, the park employees should consult with the regional concession program to determine if the proposed changes are within the scope of the contract. A listing of common types of operating plan changes is available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

Changes to operating plans for 1998 Act contracts can be made unilaterally by the park whereas 1965 Act contracts require concurrence by the concessioner for changes. In either case, operating plan changes should be discussed with the concessioner to help ensure that the requirements are clear and can be practically implemented.

6.6 Maintenance Plan

A maintenance plan is required for concession contracts that convey a land assignment (category I and II concession contract). The maintenance plan is exhibit H to the standard concession category I contract and exhibit E to the standard concession category II contract. It defines the maintenance responsibilities of the concessioner and the park. It is developed during prospectus development but may be updated during the term of the contract to address changes in maintenance requirements and responsibilities. As with operating plans, changes in maintenance plans cannot materially change the terms of the contract.

(See Chapter 8 for additional information on maintenance plan preparation and updates, and concession contract maintenance oversight procedures)

6.7 Land and Property Documentation

Records concerning assigned land, government property, and personal property documentation must also be maintained.

6.7.1 Assigned Land, Real Property and Government-assigned Personal Property

Category I and II contracts include the assignment of land and real property improvements. Government-owned personal property, including equipment, artwork, and other items may also be assigned to a concessioner under category I, II or III contracts. These assignments are documented as exhibits to the contract. They may be changed or updated during the term of

the contract but contract amendment is required.

6.7.2 Concessioner-owned Personal Property

In addition to assigned government-owned personal property, the concessioner maintains its personal property. This property can range from equipment to visitor service vehicles to portable buildings.

A listing of this property is developed during prospectus development and is provided in the prospectus. A current list is useful to:

- ◆ Ensure personal property identified in the concessioner's offer is delivered and maintained by the concessioner.
- ◆ Track changes in ownership as equipment is replaced during the term of a contract.
- ◆ Understand the scope of property that might be involved in personal property disposition at the end of the contract.

Concessioner reporting requirements for changes in personal property are defined in the maintenance plan for category I and II contracts and in the operating plan for category III contracts. Park concession personnel must ensure these reports are submitted and periodically review them with the concessioner to confirm they are current.

6.8 Other Contract Documents

Other contract documents include exhibits on nondiscrimination, concessioner construction, LSI, insurance and licensed marks. Management of exhibits regarding LSI, construction, and maintenance are addressed in Chapters 8 and 9 in this Guide. Management of nondiscrimination and insurance requirements is described in relevant sections of this chapter. Changes to these exhibits require contract amendments as described in Managing the Contract and Contract Exhibits above.

6.9 Concession Insurance Management

6.9.1 Introduction

Concession contracts identify the types, minimum insurance coverage amounts and insurance terms and conditions required under the contract. Concessioners are responsible for obtaining and maintaining insurance to meet these contract requirements and to comply with applicable laws. The Service is responsible for tracking compliance with concessioner insurance requirements and updating these requirements during the term of the contract if necessary. This section describes these concessioner and Service responsibilities and procedures.

6.9.2 Initial Insurance Requirements and Coverage Minimums

The NPS develops insurance requirements on a contract-by-contract basis. Requirements are documented in exhibit I of category I contracts, exhibit F of category II contracts, and exhibit D of category III contracts.

(See Chapter 4 for additional information on the process for identifying and documenting insurance requirements in contracts)

6.9.3 Changing Insurance Requirements and Coverage Minimums

Insurance requirements may be modified during the term of the contract to reflect changes in

real property assignments and valuation, changes in government-assigned personal property and associated value, changes in the concession operations and associated risk, and changes in the insurance market which affects the availability and cost of the minimum insurance required.

Insurance consultant experts are available through the Program to assist parks and regions in assessing such changes. Changes in insurance requirements or minimums during the term of the contract may be subject to analysis to determine the effect on the financial terms of the contract. Changes may require a contract amendment as outlined in the following subsections.

Concessioners should be encouraged to consult with its own insurance professional consultant in determining the types and levels of insurance they will obtain. Concessioners may obtain insurance coverage in excess of the contract requirements based on its own insurance advice and business assessment.

6.9.3.1 Property Insurance Changes

Parks are responsible for reporting real property assignment changes such as changes in assignment, use and condition that may occur during the term of the contract to WASO through their regional office. Some real property changes may require a contract amendment.

WASO commercial services updates IRVs at least annually to reflect such reported changes in as well as changes in industry-standard property replacement values. When there is a greater than 5 percent change in the IRVs for the entire portfolio of assigned real property, WASO delivers updated IRV information to regional CS offices. Regional CS offices are responsible for reviewing and updating the IRV data for each contract based on such percent changes and other factors and transmitting this data to the concessioner and to the park. Such IRV updates are not considered changes requiring a formal contract amendment. Parks are responsible for confirming the concessioner received this data and updated its real property insurance appropriately. Regions are responsible for maintaining IRV data in the regional contract file.

Parks are also responsible for reporting changes concerning both government-assigned and concessioner owned personal property, to its regional offices so that the minimum property insurance coverage requirement can be updated in the insurance exhibit.

6.9.3.2 Other Insurance Changes

Liability insurance and other insurance types and coverage amounts typically will not change during the term of a contract unless new services are added, services are removed, or some other extraordinary circumstance causes the NPS to modify the insurance coverage minimums or terms and conditions. Changes to these insurance requirements are documented in the insurance exhibit and require a contract amendment.

6.9.4 Insurance Compliance Review

Concessioners must demonstrate compliance with the insurance requirements contained as terms of its concession contracts. Proof of the minimum required insurance coverage is a prerequisite for initial contract award and must also be provided annually thereafter. Failure to provide the required insurance documentation will negatively affect the performance rating of the concessioner and can be cause to suspend of the concessioner's operations within the park. Sustained non-compliance is a contract breach that can lead to termination.

Proof of insurance documentation is normally provided in the form of a broker's certificate of insurance. The NPS is responsible for reviewing this documentation to ensure compliance with

the insurance terms of the concession contract. This includes ensuring that concessioner insurance is current and that coverage amounts meet the contract minimums and other insurance terms are met. This review process is the responsibility of the park and is part of the administrative compliance (ADM) evaluation conducted through the Concessioner Review Program described in Chapter 7.

The insurance compliance review process is complicated. To assist parks, the Program has established a centralized process for collecting and reviewing concessioner insurance documentation using an expert insurance consultant. Parks selected to participate in this program are responsible for coordinating the upload of concessioner insurance documentation from the concessioner into the system for review against the contract terms. Parks may also be requested to coordinate with the concessioner to obtain additional insurance documentation to determine compliance. Parks will inform the concessioner of compliance issues when they are identified through this third-party analysis. The online [NPS Commercial Services Concession Specialist Toolkit](#) provides details on the Insurance Compliance System standard operating procedure (SOP).

6.9.5 Visitor Acknowledgement of Risk

NPS policy is that the concessioner should alert visitors of the dangers inherent in high risk activities, and that visitors assume responsibility for their own negligence.

The NPS prohibits concessioners from requiring that customers sign a waiver of liability that would relieve the concessioner's liability for its *bona fide* negligence resulting in visitor bodily injury, death, or loss of personal property. The concession contract does authorize the concessioner to use a visitor acknowledgement of risk (VAR) document when the NPS determines that the concessioner is providing a high-risk service. The VAR informs the visitor of the inherent risk of the activity and provides a means for the visitor to declare in writing that they understand the risks of the activities they are to engage in and that they possess those prerequisite skills or experience.

In some instances, concessioners operate in multiple federal or state land management agency jurisdictions. These other agencies that have jurisdiction over the concessioner when operating in their lands, may allow the operator to use a waiver of liability. Concessioners may request to combine the VAR with another agency's waiver of liability to streamline paperwork for the visitor and to increase operational flexibility if activities could occur in multiple jurisdictions. Forms may be combined provided that NPS limitations are clearly separated from those of other agencies in a manner that enables visitors to understand his or her rights while participating in the NPS-authorized activity. The VAR may also be incorporated into a general agreement containing other visitor terms and conditions such as responsibility for visitor personal property, use of photos, etc. However, the VAR portion of the form must be clearly defined and provide an independent signature or initial block.

The VAR must not limit the timeframe within which a visitor can bring suit against a concessioner to a shorter timeframe than is allowable in the state in which the accident/event occurred. The VAR must not limit the court of venue in which a negligence suit can be brought beyond the court having jurisdiction where the accident occurred, and/or the state in which the concessioner is incorporated or licensed to do business, and the closest federal court to the location of incorporation, or licensed to do business.

A VAR template is available in the online [NPS Commercial Services Concession Specialist](#)

[Toolkit](#). This VAR template provides standard, NPS-approved language and enables the concessioner to add a description of the activity/service and the associated risks. Prior to use, the concessioner must request permission to use the VAR and must submit the proposed form for review and approval by the Service. The park, the regional CS chief, and the regional solicitor will review and approve the VAR prior to use to ensure that the above objectives and requirements are met and that the VAR is compatible with applicable laws.

6.9.6 Insurance Technical Support, Guidance and Training

The Program uses the support of an insurance expert consultant to provide insurance technical support to parks and regions on concessioner insurance requirements during the term of the contract as well as during prospectus development. Examples of such support services include but are not limited to: reviewing existing concessioner contract insurance requirements to address changes in facilities or services, assisting in identifying market availability of required insurance in the contracted amounts, and providing guidance on unique property insurance issues.

Guidance and tools on insurance requirements and compliance review are available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#). WASO CS periodically provides training to NPS concession specialists on insurance requirements through chats and other means.

6.10 Concession Management Programs

. Concessioners are responsible for implementing management programs to ensure they have safeguards to preserve and conserve the resources and values of the park unit and comply with all applicable laws, regulations, and contractual requirements. Concession management programs include those for environmental, risk, public health and asset management.

6.10.1 Environmental Management

Concessioners are responsible for developing and implementing an EMP. The EMP must be appropriate to the nature and size of the operation and must account for the potential environmental aspects of the concession activities. Concession contract provisions and contract management requirements are in place to help ensure that the concessioner EMP is developed and properly executed. Service responsibilities include assisting concessioners in understanding the Service's EMP requirements, reviewing and accepting the concessioner's documented EMP if applicable, and conducting an annual EMP evaluation as part of the Concessioner Review Program.

6.10.1.1 Environmental Management Authorities

Applicable laws for concessioner environmental management include laws, regulations and ordinances administered by the US Environmental Protection Agency (USEPA), and state and local environmental agencies with jurisdictional authority. Relevant Service policy requirements for environmental management are contained in NPS Management Policies 2006, Section 10.2.4.10, DO-13A: Environmental Management Systems, DO-13B: Solid and Hazardous Waste, DO-14: Resource Damage Assessment and Restoration, and DO-12: Environmental Impact Analysis. NPS DO's can be viewed on the NPS Office of Policy [webpage](#). The superintendent's compendium may also establish environmental requirements applicable to concessioners. Environmental best management practices (BMPs) by concessioners are also

advocated through departmental, NPS, regional or park guidance.

The concession contract, particularly Section 6 of the standard contract for category I and II 1998 Act contracts and Section 4 Addendum I for 1998 category III contracts, contains the concessioner's contractual requirements for environmental management. These requirements cover:

- ◆ Documented EMPs
- ◆ Environmental data
- ◆ Reports
- ◆ Notifications and approvals
- ◆ Environmental liability insurance
- ◆ Operational performance standards
- ◆ Environmental audits.

In addition, operating and maintenance plans should dictate environmental requirements particular to the concession contract.

The superintendent has the authority to immediately address environmental compliance issues at the park. This may include closure of operations and/or required action by the concessioner to mitigate or abate environmental concerns that may be identified at concession facilities. The concessioner's environmental program is subject to Service environmental audits and annual reviews through the Concessioner Review Program described in Chapter 7.

The USEPA has the authority to inspect concession operations and take necessary enforcement actions. Local and state agencies may also have environmental authority, depending on the particular park jurisdictional determinations.

6.10.1.2 Concessioner Documented EMP

A written EMP is required for category I and category II contracts in accordance with Section 6(b) (1) of the standard. (It should be noted that although category III contracts do not require that concessioners have written EMPs, these category III concessions must still have a "program," even if it is unwritten, to address the environmental aspects of its operation.) Furthermore, the NPS may require a written EMP for a category III contract as a unique requirement in a concessioner's operating plan when the concession operation is sufficiently complex to warrant such a program.

The concessioner's written EMP documents the program it has established to manage the environmental aspects of its operations in compliance with applicable laws, regulations, and contract provisions. The written EMP must address components specified in the contract.

The NPS has established standards for the concessioners EMP based on industry practice and guidelines including international standards such as ISO 14101 that cover these components. These components and associated standards provide a framework and expectations for the concessioner EMP, but do not define the specific approach or operating procedures that the concessioner implements or documentation they maintain. The contract may also identify park-specific EMP requirements based upon the particular operation which the concessioner must address in its EMP.

(See Chapter 7 for additional information on EMP standards)

Guidance on the written EMP is available in the [NPS Commercial Services Policy Library](#).

Concessioner Preparation of the Documented EMP

Category I and II concessioners are responsible for preparing its written EMP and submitting it to the superintendent within 60 days of the effective date of the contract. The park must review the EMP to determine if it conforms to contractual requirements. The EMP is the concessioner's program and should reflect its particular business approaches and practices. The park review should not focus on specific business practices, but on whether contractual elements are included and whether important concepts and critical operational issues that could result in failure of the program are addressed. A more detailed review might unintentionally transfer liability to the NPS for the concessioner's program and practices.

If the written EMP conforms to contractual requirements, the park should notify the concessioner and document acceptance of the EMP. If the EMP does not conform to contractual requirements, the park should notify the concessioner of the deficiencies and provide the concessioner with an opportunity to revise the EMP documentation and procedures. The written EMP must be finalized and accepted no later than 120 days after the start of the operation. A concessioner's failure to provide an acceptable written EMP may result in the suspension of the concessioner's operations within the park.

Annual Update and Review of the EMP

The concessioner must review and update its EMP (written or unwritten) annually to reflect changes in facilities, operations, employees, environmental goals and objectives, and other applicable elements.

The park must conduct an annual EMP compliance review as part of the Concessioner Review Program. A concessioner's failure to maintain current, NPS-accepted EMP may result in a poor rating and the suspension of the concessioner's operations within the park.

6.10.1.3 Environmental Data, Plans, Reports, Notifications and Approvals

The concession contract requires concessioners to provide to the NPS, copies of any environmental management-related reports submitted to regulatory agencies, notices of violations, and communications with regulatory agencies. The park may also request that the concessioner submit specific, environmental management-related plans (e.g., hazardous waste management plan, grease trap maintenance procedures). The operating plan should specify the content and schedule of these submissions. A concessioner's failure to provide the applicable documentation can result in a poor rating under the Concessioner Review Program and the suspension of the concessioner's operations within the park.

6.10.1.4 Concessioner Responsibility for NEPA Compliance and Cultural and Archeological Resource Protection

Concessioner environmental management responsibilities extend to meeting contractual and applicable legal requirements related to complying with the NEPA and protecting archaeological resources. The concessioner's EMP should address concessioner policies and procedures to meet these requirements. The concession contract operating and/or maintenance plan should define park-specific procedures and concessioners must consult with the park to understand and follow these procedures.

6.10.1.5 Environmental Releases

Concessioners are responsible for preventing, mitigating, and responding to discharges, releases, or threatened releases in accordance with applicable laws and the concession contract. The concession contract specifies that the NPS may recover costs associated with any cleanup activities that were not conducted promptly or adequately by the concessioner.

The NPS conducts due diligence monitoring of concessioner operations to identify any potential or actual discharges or releases from concessioner operations on NPS lands and to ensure that timely reporting and corrective actions are taken to address such events. These processes are described in Chapter 7.

6.10.1.6 Environmental Management Program Review

Concessioners are independently responsible for conducting its own program reviews, audits, and inspections for environmental management. The Service conducts annual evaluations of the concessioner's EMP as described in Chapter 7.

6.10.1.7 Concessioner Environmental Program Technical Assistance and Training

WASO CS coordinates with WASO environmental compliance sustainability programs to provide online technical assistance to parks regarding environmental compliance in the form of guidance, fact sheets, commercial services chats and training. The NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#) maintains a library of concessioner environmental management reference sources for park employees. Assistance is provided to concessioners through the concessioner Environmental Audit Program (EAP) (see Chapter 7) and the [Concessioner Toolkit](#) on the CS external web site. In addition, regional environmental coordinators and the WASO CS Technical Assistance Program (TAP) may also provide support to parks and regions in addressing technical issues.

Concessioners are responsible for training its employees and consulting with technical experts as necessary to ensure that its operations remain compliant with applicable laws, regulations, and policies. Concessioners may be invited to park environmental training. This practice can foster awareness, communication, and collaboration between park employees and concessioner personnel. However, park-led training is not a substitute for the concessioner's own training. Concessioners should be made clearly aware that the policies and procedures discussed in such training belong to the park and must be adapted for use by the concessioner before being included in the concessioner's EMP.

6.10.2 Concession Risk Management

NPS concessioners must provide a safe and healthy environment for all concession visitors and employees. Concessioners are independently responsible for developing and implementing a Risk Management Program (RMP) to meet these obligations and comply with all applicable laws, contractual obligations, and health and safety regulations, ordinances and relevant NPS policies. The RMP must be appropriate to the nature and size of the operation and must account for the potential health and safety effects of all activities conducted by the concessioner or to which the concessioner contributes.

The Service is responsible for defining the minimum requirements of the RMP through the concession contract's operating plan, assisting concessioners in understanding servicewide RMP

requirements, reviewing and accepting the concessioner's documented RMP, and conducting an evaluation of risk management processes as part of the Concessioner Review Program.

6.10.2.1 Risk Management Authorities

Applicable laws for risk management include the Occupational Safety and Health Act (OSHA) and associated regulations. Relevant NPS policy is contained in NPS Management Policies 2006, Section 10.2.4.8, the standard concession contract, DO-50B: OSHA Program, DO-50C: Public RMP, DO-58: Structural Fire Management, and associated RMs (found on the NPS Office of Policy [webpage](#)). The superintendent's compendium may also establish risk management requirements applicable to concessioners. Other safety practices may be advocated through DOI, NPS, regional, or park guidance. The NPS has adopted National Fire Protection Association (NFPA) standards and concessioners are contractually required to meet these requirements.

The superintendent is the authority that has jurisdiction to mitigate safety concerns as defined by the Life Safety Code (NFPA 101). The superintendent has the authority to require concessioner actions and/or close operations to abate safety concerns. Service employees may conduct inspections and the superintendent may unofficially cite concessioners for violation of OSHA requirements. Federal, OSHA, and other safety-related organizations have the authority to inspect concession operations and take enforcement actions against concessioners. Local and state agencies may also have authority depending on the particular park's jurisdictional determinations. Formal citations for OSHA violations at concession facilities are to be made only by authorized representatives of the Secretary of Labor.

6.10.2.2 Concessioner Documented RMP

In accordance with the Management Policies and the standard concession contract, all concessioner's must prepare and maintain a documented RMP.

The written RMP must address components and associated standards established by the NPS based on industry practice including international standards such as ISO 31000:2009(E). These components and standards provide a framework and expectations for the concessioner RMP, but do not define the specific approach or operating procedures the concessioner must implement. Chapter 7 describes these RMP standards in more detail. The contract may also identify park-specific RMP requirements applicable to the particular concession operation which the concessioner must address in its RMP. Guidance on how to develop an RMP is available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

Concessioner Preparation of the RMP

Each concessioner's RMP must be written. The concessioner must submit a draft of the RMP to the park within 60 days of contract award. The park must review the written RMP to determine if it meets contractual requirements and demonstrates the concessioner's ability to implement an effective safety program. The RMP is the concessioner's program and should reflect its business approaches and practices. The park review should focus on important risk management concepts and critical operational issues that may result in a failure of the concessioner's program. A more detailed review could unintentionally transfer liability to the NPS for the concessioner's program and practices.

The park should conduct the documented RMP review in a timely manner. If the RMP conforms to contractual requirements and NPS RMP guidelines, the superintendent should notify the

concessioner and document acceptance the RMP. If the RMP does not conform to contractual requirements, the superintendent should notify the concessioner of the RMP deficiencies and provide the concessioner with the opportunity to revise the RMP documentation and associated procedures. The RMP must be finalized and accepted no later than 30 days after commencement of concession operations. Failure to prepare an acceptable RMP can result in suspension of the concessioner's operations within the park and may be grounds for contract termination.

Annual Update and Review of the RMP

The concessioner must review and update its RMP annually to reflect changes in facilities, operations, employees, risk management goals and objectives and other applicable elements. The park must conduct an annual RMP review as part of the Concessioner Review Program. Failure to maintain an up-to-date, NPS accepted RMP can result in a poor rating and the suspension of the concessioner's operations within the park.

6.10.2.3 Risk Management Data, Plans, Reports, Notifications and Approvals

Standard operating plan language requires that concessioners provide the park with copies of any risk management-related reports submitted to regulatory agencies, notices of violations, and communications with regulatory agencies. Concessioners must also report all visitor accidents that occur at concession facilities or during concessioner-provided activities to the park in accordance with the operating plan. The operating plan may also specify that certain risk-related concessioner plans such as hazard communication, emergency response, and others be submitted to the park. The operating plan specifies the content and schedule of these submissions.

As part of the annual Concessioner Review Program, the superintendent should assess all submittals to ensure timeliness, completeness, and compliance with contractual requirements. A concessioner's failure to provide the applicable documentation can result in a poor rating under the Concessioner Review Program and the suspension of the concessioner's operations within the park.

6.10.2.4 Risk Management Performance Review

Concessioners are independently responsible for conducting its own program reviews, audits, and inspections for risk management. The Service conducts annual evaluations of the concessioner's RMP as described in Chapter 7.

6.10.2.5 Emergency Response

Concessioners may be involved in various emergencies such as natural disasters and accidents. As part of its RMP, concessioners are responsible for developing emergency plans and procedures, and for complying with all applicable laws and contractual requirements for emergency responses.

It is critical for the concessioner and the park to coordinate the planning and execution of emergency functions to ensure effective emergency response. The operating plan should clearly define the emergency response-related roles and responsibilities of the concessioner and the park, particularly when such coordination is necessary and when contractual obligations extend beyond those required by applicable law. For example, the operating plan should define the

concessioner's level of required response for hazardous substance spills on concession facilities under the OSHA Hazardous Waste Operations and Emergency Response Standard (29 CFR 1910.120).

Note that the requirement for a concessioner to provide emergency response services beyond its own operations may be considered outside the scope of a concession contract. Parks should consult with their regional concession office before requiring such services by a concessioner.

WASO CS maintains a Commercial Services Incident Response Plan (CSIRP) that describes its incident command organizational structure, integration with the overall Service-level Incident Command System (ICS), and procedures to be employed to ensure that commercial service technical support is available for park, region, and servicewide emergency response events affecting concession operations. This support may include mobilization of a CSIRP cadre to assist in field activities. CSIRP policy and procedures are found in the [NPS Commercial Services Policy Library](#).

6.10.2.6 Fire Programs

The scope of each concessioner's RMP is broad and may include fire management. Concessioners are obligated to comply with structural fire and wildfire planning, prevention and response requirements for its facilities and operations in accordance with OSHA and NFPA and with requirements in DO-18: Wildland Fire Management and DO-58: Structural Fire (found on the NPS Office of Policy [webpage](#)) as specified in the contract operating and maintenance plans. Among the requirements contained in the operating and maintenance plan are the requirements, as applicable, to register with the U.S. Fire Administration Fire Safe Hotel listing, submit of fire prevention and response plans to the NPS and report on the inspection, testing and certification of facility fire systems to the Service.

As with other emergency response activities, it is critical for the concessioner and the park to coordinate planning and execution of fire program functions to ensure effective emergency response in the park. The operating plan must clearly define the fire program-related roles and responsibilities of the concessioner and the park, particularly when coordination is necessary and when contractual obligations extend beyond those required by applicable law.

6.10.2.7 RMP Technical Support

WASO CS coordinates with the NPS Risk Management Division to provide risk management technical assistance to park employees that oversees concessions. Technical assistance is available through online guidance, fact sheets, commercial services chats and training. The NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#) maintains a library of these risk management administration documents and reference sources for park employees. Regional safety officers may also provide technical support. The WASO CS TAP may provide support to parks and regions by addressing technical issues.

WASO CS maintains risk management related guidance and tools for concessioners in the online [Concessioner Toolkit](#) on the external website.

Concessioners are responsible for training its employees, consulting with technical experts as necessary to ensure compliance with applicable laws, and ensuring the concessioner's RMP is fully implemented. Concessioner personnel may be invited to park safety training. This practice can foster awareness, communication, and collaboration between park and concessioner personnel. However, park-led training is not a substitute for the concessioner's own training.

Parks should make concessioners aware that the policies and procedures discussed in such training belong to the park and must be adapted for use by the concessioner before inclusion in the concessioner's RMP.

6.10.3 Concession Public Health Management

Concessioners provide a range of visitor and employee services that have public health management aspects including food service operations, swimming pools, breweries, bath houses, shower facilities, overnight accommodations, dog kennels, and employee housing and employee dining rooms. Concessioners also operate water, solid waste, and waste water systems for which there are public health considerations. Concessioners may also be required to deal with employee and visitor illnesses. Concessioners are required to develop and implement a Public Health Program (PHP) to meet legal and contractual requirements for protecting the health of visitors and employees while providing visitor services. The Service responsibilities include defining the minimum requirements of the PHP, assisting concessioners in understanding servicewide PHP requirements, and conducting an evaluation of public health management processes as part of the Concessioner Review Program.

6.10.3.1 Public Health Authorities

Public health at concession facilities is dictated by applicable laws, including the Clean Water Act, Safe Drinking Water Act, and the U.S. [Food and Drug Administration Food Code \(Food Code\)](#). Service policy is contained in DO-83: Public Health (found on the NPS Office of Policy [webpage](#)) and associated RMs, and addresses PHPs including prevention, control and investigation of food, water, and vector-borne diseases in national parks. Food safety is managed in accordance with the current version of the US Food Code.

The U.S. Public Health Service has an agreement with the NPS to support the Service's operations. The NPS Office of Public Health (OPH):

- ◆ Provides servicewide public health policy and procedures.
- ◆ Manages a cadre of public health officers and park sanitarians.
- ◆ Conducts food safety inspections and other public health service evaluations and prepares associated reports as part of the Concessioner Review Program.
- ◆ Oversees disease and illness surveillance activities and responses to public health incidents.
- ◆ Provides servicewide guidance and training regarding public health.

NPS public health officers and park sanitarians are consultants. The superintendent is the authority that has jurisdiction to immediately address public health issues. The superintendent may close concession operations and/or require action to mitigate or abate public health concerns that may be identified at concession facilities.

State health agencies, or local health agencies (if delegated by the state), may have authority to inspect or take enforcement action in parks dependent upon particular park jurisdictional determinations. In some situations, the local county or other authorized public health agency may conduct food safety and other public health inspections or both the park and the local agency may conduct such inspections.

The Centers for Disease Control may be invited to conduct investigations and studies within a park.

6.10.3.2 Concessioner Public Health Program

The NPS Public Health Service recommends a systematic approach for concessioners to manage public health. Concession contracts do not require that concessioners develop an all-encompassing documented PHP. However, the concessioner may develop such a comprehensive document as a best management practice. However, the operating plan may require the concessioner to develop documented procedures that describe a variety of systems to address particular public health parks such as a food safety program. The park may consult with regional and WASO CS employees and NPS public health officials to determine appropriate requirements for inclusion in the concession contract.

The park should review any contract-specified PHP-related plans to ensure completeness as part of the ADM portion of the Concessioner Review Program. The park should also review any other plans and procedures the concessioner develops to address its PHP and should provide feedback as appropriate. OPH may assist parks in these reviews.

6.10.3.3 Public Health for Specialized Concession Services and Utility Systems

Concessioners operate a number of unique services for which the NPS Public Health Service has developed specialized requirements and guidance. These are contained in [RM-83\(C2\): Temporary Food Safety Guidelines](#), [RM-83\(D2\): Standard for Public Swimming Pools](#), [RM-83\(D3\): Standard for Public Spas](#) and [RM-83\(F\): Backcountry Operations](#). The concessioner operating plan specifies park-specific concessioner requirements to comply with these guidelines.

Concessioners may operate water and wastewater treatment systems for its concession operation. These systems are subject to applicable public health requirements contained in [RM-83A](#) and [RM-83B](#) and park-specific requirements contained in the concessioner operating and maintenance plans.

6.10.3.4 Public Health Illness Reporting, Notifications and Response

In accordance with Food Code requirements, copies of food inspection reports for concessioner food and beverage operations must be made available to the public. Parks must keep the most current food service establishment inspection reports available for public review upon request through the superintendent's Office. Concessioners are required to post a contact number for the public to obtain this report in each food establishment.

Concessioner illness notification and response processes are a critical part of a park's overall PHP. The concessioner operating plan must specify applicable concession illness notification and reporting procedures.

Concessioners must report a suspected outbreak of a communicable disease, whether among employees or visitors, in accordance with procedures defined in [RM-83\(G1\) – Disease Reporting](#) and in accordance with park-specific requirements the operating plan. The NPS PHP has developed a [Disease Log](#) and backcountry [Gastrointestinal Illness Incident Report Form](#) for reporting purposes which can be modified to meet park-specific needs.

If necessary, based on the specifics of the incident, the NPS OPH will develop and execute a public health response plan/investigation. This may potentially involve collaboration with the NPS medical epidemiologist and/or health officials from local and state health departments or

federal agencies, the investigation might include interviews, laboratory testing, environmental sampling, and records review.

Standard contract language requires that concessioners provide the NPS with copies of public health-related reports submitted to regulatory agencies, notices of violations, and communications with regulatory agencies. The NPS may request that the concessioner submit certain other public health related reports or plans to the park. The operating plan should specify the content and schedule of these submissions.

The superintendent, in accordance with the annual Concessioner Review Program, should assess all PHP plans, reports and other submittals to ensure timeliness, completeness, and compliance with contractual requirements. A concessioner's failure to provide applicable documentation may result in a poor ADM rating and suspension of the concessioner's operations within the park.

6.10.3.5 Public Health Illness Surveillance

The NPS may request that concessioners participate in preventative illness surveillance or other proactive PHPs implemented by the NPS OPH. Such participation is voluntary unless specified by the concession contract.

6.10.3.6 Public Health Technical Assistance

Public health consultants/sanitarians (PHCs) provide technical assistance to parks and concessioners during public health assessments and through *ad hoc* consultations coordinated by the park. WASO CS will coordinate with the NPS OPH and provide technical assistance to parks on concessioner public health issues in the form of guidance, fact sheets, commercial services chats, and other training.

Concessioners are responsible for training its employees and consulting with technical experts as necessary to ensure compliance with applicable laws. Some public health training, such as Serve Safe, may be specified in the operating plan. Concessioners may also be invited to participate in NPS-provided training as appropriate.

WASO CS maintains a library of concession-related public health management documents and references for park employees in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

6.10.4 Concession Asset Management

Concessioners are required to develop and implement systems, plans and procedures to meet legal and contractual requirements for managing real and personal property. The Service defines these requirements through the contract and maintenance plan. Details on the policies and procedures to meet these requirements are available in Chapter 7. The Service includes an annual evaluation of the concessioner's asset management performance as part of the Concessioner Review Program as described in Chapter 7.

6.11 Concession Visitor Satisfaction

The NPS Commercial Service Program is responsible for overseeing concessioner visitor services to ensure they are satisfactory and of good quality. A key component of concession contract management to ensure this is achieved is the development of a Visitor Satisfaction Program (VSP) to collect, review and act on visitor satisfaction data.

6.11.1 Concessioner VSP

Each concessioner must develop and implement a VSP to monitor customer satisfaction with its services in accordance with the terms of its concession contract. The components of this VSP are dependent upon the type and size of the services being provided. VSP requirements must be specified in the concession operating plan.

The VSP may include collecting visitor satisfaction data on-line, on-site, mail, and/or via other customer satisfaction evaluation methods. The VSP be implemented using in-house resources or utilize the services of a third-party evaluator. It may also involve monitoring of online travel systems such as Trip Advisor, mystery shopper programs or other methods.

At a minimum, each concessioner will be required to submit all complaints received from visitors to the park concessions management office. Reports summarizing the results of the concessioner's VSP may also be required. In addition, as specified in the operating plan, the following notice must be prominently posted at locations and online sites deemed appropriate by the superintendent:

This service is operated by (name of concessioner), a concessioner under contract with the U.S. Government and administered by the National Park Service. The concessioner is responsible for conducting all operations in a satisfactory manner.

The reasonableness of prices charged is based on comparability. That is, the prices are based on those prices charged by closely similar private enterprises outside the park for similar services with due consideration for appropriate differences in operating conditions. Such differences in operating conditions may include length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant.

Please address any comments to:

(Superintendent's name, title and address)

PARK_superintendent@nps.gov

Concessioners may independently develop and execute VSP program components beyond those specified in the contract.

6.11.2 Commercial Services VSP

The Service maintains its own VSP to monitor visitor satisfaction with concession facilities and services. Parks must accept comments from the public regarding concessions when offered. Parks may also conduct mystery shopping through Service employees or consultants to collect service quality data.

Additional servicewide VSP programs and procedures may also be developed. These may include collation and analysis of data collected at the park-level. It may also include separate, concession-focused Service-wide surveys. Concessioner participation in this servicewide program in lieu of its own programs may be a requirement of new concession contracts.

Visitor satisfaction data collected by the Service through concessioner, park or servicewide VSP efforts will be utilized as part of the Concessioner Review Program to determine the AOR score for the concessioner as described in Chapter 7.

6.12 Concession Rate Administration

The goal of the NPS Concession Rate Administration Program is to ensure that rates charged to the public for concessioner-provided facilities and services are fair, reasonable, and in accordance with applicable law and NPS policy. The processes established to meet these goals are intended to be the least burdensome to parks and concessioners as possible while providing consistent and defensible procedures.

6.12.1 Rate Administration Authorities

Title IV Sec. 406 of the National Parks Omnibus Management Act of 1998 (1998 Act) sets forth concession rate administration objectives and responsibilities as follows:

- ◆ **Sec. (a)** - Each 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).
- ◆ **Sec. (b)** - A concessioner's rate 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 non-burdensome 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 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: length of season, peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and type of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods and services, after considering the factors referred to in the preceding sentence.

These objectives and responsibilities are restated in [NPS Management Policies 2006](#). The NPS Concession [Rate Administration Guide](#), prepared and maintained by WASO CS details the most current rate administration SOPs. The guide is updated by the Program on a regular basis. The NPS continues to evolve and improve rate methods and procedures to meet legal and policy requirements, reduce concessioner and park employee efforts, and improve visitor services. Pilots of new rate methods occur regularly and may be introduced as new and improved rate methods. The guide is updated to reflect such changes.

6.12.2 Rate Methods and Conditions

The Service has established a set of methods to approve concessioner rates in a manner that is practicable, efficient, provides reasonable rates for visitors, fairness to concessioners and achieves the following objectives:

- ◆ Meets the goals established under applicable laws and NPS policy.
- ◆ Produces defensible, valid, and reliable results.
- ◆ Reflects the competitive marketplace.
- ◆ Addresses the unique factors, character, and requirements of concessioner facilities and services within the NPS.
- ◆ Ensures a consistent servicewide approach.
- ◆ Provides a professional process for parks to implement the program.

The applicability of each method depends on the types of services and products a concessioner

provides and the types of operating situations within which a concessioner operates. Table 5.4 outlines these methods and identifies, by service type, those methods that are preferred and alternatives. Parks are encouraged to use the method that is the least burdensome but still meets the Rate Administration Program objectives. The park superintendent is the authority for deciding the appropriate rate method supported by Park CS personnel. The region and WASO may also provide consultation in this process. Details on the application and processes of each method are provided in the [Rate Administration Guide](#).

Table 6-1: Rate Methods

Service Type	APPROVED RATE METHOD	
	Preferred ¹	Alternatives
Lodging	Core (Room)	Direct Comparability Financial Analysis
Food and Beverage	Core (Menu)	Direct Comparability Cost of Goods
Retail-Convenience	MSRP/Core Markup	MSRP/Full Comparability
Retail-Merchandise	Competitive Market Declaration (CMD)/MSRP	Direct Comparability
Fuel	Fuel Markup	Markup/Direct Comparability Hybrid Direct Comparability
Other Services	Core (Services)	Direct Comparability Financial Analysis

¹CMD is universally the preferred method but many parks do not operate in a location where the services being provided are in full competition with businesses outside the park. Preferred rate methods reflect the next best method after CMD.

WASO CS provides national guidance, tools and data such as annual markup percentages and consumer price index (CPI) data to the field in order to support the field in using these rate methods.

The NPS may seek out and test new rate methods and procedures to further reduce concessioner and park burden while achieving Rate Administration Program objectives. Pilots may be conducted at parks in coordination with WASO CS to assess the potential for such new or revised methods. Upon testing and determination that they are effective, these methods may be formally adopted by the NPS as part of the Rate Administration Program.

The rates approved using these applicable rate methods, represent the maximum allowable charge to the public for the product or service. This simplifies the approval process and gives the concessioner a clear rate ceiling. In addition to a maximum price, the approved rate also includes the minimum quantity of the product or service that must be provided at that rate. For example, smaller food portions than those portion sizes approved on the rate schedule will be regarded as an unauthorized rate. Exceptions are competitive market declaration rates which have no defined approved rate and non-core services or products which are similarly set by the concessioner based upon market conditions.

Concessioners may discount its rates at any time to address market demand or for other business reasons. In addition, to provide the opportunity to charge in a manner comparable to

industry while still retaining the need to approve rates for services, the approved rate may be defined for a particular operating time-period such as weekdays versus weekends; high, low, and shoulder seasons; or other periods unique to the park. Length of stay restrictions, group rates are also factors in the rate approval process.

6.12.3 Rate Request, Analysis, Approval, and Appeal Procedures

The process for parks and concessioners to set the initial rate, request rate approvals during the term of the contract including advanced rates, conduct rate reviews and approvals during the term of the contract, and manage the rate appeal process are defined in the [Rate Administration Guide](#). These procedures provide a practical consistent, defensible process to approve rates that are fair and reasonable in a timely manner. The superintendent is the authority for approving rates but is supported by the park CS personnel. [The Rate Administration Guide](#) also processes for regions to conduct reviews and make final rate request determinations in response to concessioner rate request appeals. The RD is the authority to approve or deny such appeals.

6.12.4 Monitoring Compliance with Approved Rates

The park should conduct compliance oversight as part of the Concessioner Review Program to ensure that concessioners are complying with rate administration requirements. Compliance oversight should include a review of all posted rates including written and web-based advertising, brochures, and other concessioner promotional materials price tags, menus and posted rate sheets, and rack rates posted in rooms as well as advance deposit and refund programs.

6.12.5 Rate Administration Technical Support

WASO CS provides training on rate administration procedures during Evaluation and Pricing (E&P) training that is conducted annually as well as through chats and other ad hoc training and communications. Technical assistance is also available from the Program through online guidance, fact sheets, commercial services chats and training. The NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#) maintains a library of these rate administration documents and reference sources for park employees. Regional programs may also provide technical support. In addition, the WASO CS TAP may provide support to parks and regions by addressing technical issues.

Transparency in providing rate administration data and procedures to concessioners is important to ensure rates requested and managed by concessioners are consistent with NPS requirements. WASO CS maintains rate administration related guidance and tools for concessioners in the online [Concessioner Toolkit](#) on the external website.

6.12.6 Specific Concessioner Rate Administration-related Procedures and Practices

6.12.6.1 Advance Deposit Practices

Concessioners should accept advance deposits from visitors in accordance with the procedures specified in the concessioner's operating plan. These procedures should be consistent with those of the concessioner's comparables. If the operating plan does not specify advance deposit procedures, concessioners may still take advance deposits provided that its procedures align

with those of its comparables. The operating plan should be updated to reflect these procedures.

Advance rates represent the guaranteed maximum rate. If the final approved rate for the current season is lower than the advance rate, the concessioner must refund the difference between the advance deposit and the actual charges to the park visitor. If the final approved rates are higher than the advance rate, the concessioner must honor the advance rate for the park visitor's length of stay. Additional deposit practice requirements are available below.

Prior to approving advance rates, the concessioner must develop procedures for managing the advance rate and deposit process and provide those procedures to the park for approval. Concessioners must provide accounting and tracking documentation to the park upon request. Concessioners must clearly disclose refund policies regarding advance rates at the time of reservation and at the time of stay.

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

6.12.6.2 Sales by Third Parties/Intermediaries

Third-party companies and intermediaries selling rooms or services (e.g., tours, transportation, etc.) on the concessioner's behalf must sell those rooms or services at or below the NPS-approved maximum rate. Any service fee or commission charged by the third party or intermediary must be included in the approved maximum rate. If the third party or intermediary is offering additional services, such as travel planning or packaging activities, those fees must be charged separately and must not be included in the rates for the concessioner's rooms or services.

Relationships with third-party sales companies or intermediaries should be addressed in the operating plan. Topics to include in the operating plan may include:

- ◆ **Signed Written Contract** - All agreed-upon terms and conditions applicable to the relationship between the concessioner and the third party or intermediary must be included in a written document signed by representatives of both parties who have authority to execute binding legal agreements. The concessioner should have the right to immediately terminate without incurring any penalty for any breach of that agreement by the third-party or intermediary.
- ◆ **Maximum Rate Guarantee** - The concessioner may not allow third parties or intermediaries to offer rates or promotions that exceed the approved maximum rate agreed upon by the NPS and the concessioner.
- ◆ **Data Ownership** - The third party or intermediary must provide all pertinent customer data that does not include personally identifiable information to the concessioner and the NPS without exception.
- ◆ **Search Engine Optimization** - To prevent online searches from being diverted away from the concessioner's website(s), the third party or intermediary will not use the national park lodging facility or related facility names for its own search engine optimization.
- ◆ **Selective Inventory** - The concessioner will retain the right to offer the intermediary only the available inventory that it deems to be in its own best interest to market through that third party or intermediary.
- ◆ **Transferability** - The third party or intermediary may not sell, give or transfer to any other third party or intermediary its concession-related reseller services.

Concessioners may be asked to use the federal reservation system Recreation.gov to book its campgrounds or as a portal to access its lodging systems. Use of this system includes an administrative fee. Superintendents may authorize an add-on to the approved rate for the campground or lodging to cover this administrative fee.

Some companies may act independently as a reservation agent for concession services without any agreement with the concessioner. These companies often have an on-line presence and may be search engine optimized to be the top web site in a search for reservations. These companies typically charge a booking fee for their reservation services. Companies doing this are required to have a disclaimer on their web site, such as the one below:

Company X is a reservation service providing lodging and activity reservations. Company X is not an authorized concessioner of any National Park nor are we in any way affiliated with the National Park Service of the Federal Government. For this service, Company X charges a ten percent non-refundable reservation fee based on the total dollar amount of reservations made.

6.12.6.3 Tipping

The collection of tips from customers in concession operations is permissible consistent with standard industry practices. This includes those common front-country hospitality services such as food and beverage and lodging and housekeeping as well as backcountry services such as horse and mule rides, tours and charter fishing, guide services, hunting and fishing guides.

The use of tip jars at concession facilities may also be permissible if consistent with practices at the concessioner's comparable sites. Such practices are common within the hospitality sector, particularly for services such as snack and beverage bars and tour operations. The location, size, and style of such containers and associated signage should be professional in appearance, consistent with the site's décor, and unobtrusive.

Tipping practices are subject to approval by the superintendent. Approved tipping practices and procedures should be documented in the concessioner's operating plan. The park should periodically review these tipping practices to ensure the concessioner's continuing compliance. Accounting practices for distribution of tips among employees must be in accordance with federal, state, and local laws and regulations.

6.12.6.4 Managing Credit, Debit and Electronic Fund Transfer Cards and Coupons

Requirements for acceptance and management of charge cards and debit cards by concessioners must be defined in the concession contract operating plan.

6.12.6.5 Accepting Credit Cards

Concessioners must accept major credit cards. The specific cards required to be accepted must be defined in the operating plan.

6.12.6.6 Credit Card Transaction Minimums

Concessioners may set credit card transaction minimums in accordance with federal requirements under the [Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010](#), P.L. 111-203. The current minimum is \$10.00. The Dodd-Frank Act allows for the Consumer Advisory Board to increase the minimum transaction amount. If the Board increases the

minimum transaction amount, concessioners may increase its minimum transaction amounts accordingly.

This minimum transaction amount does not apply to debit cards. Concessioners may not set a minimum for these cards.

6.12.6.7 Credit Card Transactions with No Signature Required

There is no current regulatory requirement for requiring signatures for credit card transactions. Concessioners may choose not to require signatures for certain credit card charges based on its own determinations of the best business practices for its operations and specific bank policies and requirements.

Concessioners may choose to pay a higher processing fee to participate in a “no signature required” program to offset the increased risk of fraud. Fees vary among credit card issuers and networks; the actual cost difference will depend on the concessioner’s particular contract.

6.12.6.8 Credit Card Transaction Fees

As of January 2013, credit card issuers may no longer prohibit vendors from disclosing credit card transactions as an add-on to customer bills. NPS concessioners may show credit card charges as an add-on if the practice is common among industry comparables.

Parks will ensure that such charges are properly accounted for when approving rates. For example, convenience store markup percentages provided by the NACS already account for credit card transaction costs in the markup percentage. If the concessioner desires to show the credit card transaction fee as an add-on, this amount must be subtracted from the allowable markup percentage.

Concessioners may provide discounts below the approved rate for customers paying cash rather than using a charge card.

6.12.6.9 Accepting Coupons

Concessioners are not required to accept manufacturer’s coupons. Concessioners may decide to accept or reject coupons based on its own determinations of the best business practices for its operations.

6.12.6.10 Electronic Benefits Transfer Cards

Concessioners are not required to accept electronic business transfer (EBT) cards but may consider doing so voluntarily in its food service operations. EBT card are electronic debit cards that contain government benefits such as food stamp benefits or public assistance payments. These cards are issued to qualified recipients for use at automated teller machines (ATMs) and retail point-of-sale terminals.

To be eligible to accept EBT cards, a concession store must sell food for home preparation and consumption and meet at least one of the following criteria:

- ◆ The concession offers for sale, on a continuous basis, at least three varieties of qualifying foods in each of the following four staple food groups, with perishable foods in at least two of the following categories:
 - Meat, poultry, or fish
 - Bread or cereal

- Vegetables or fruits
- Dairy products
- ◆ The concession generates more than one-half (50 percent) of the total dollar amount of its concession retail sales (food, nonfood, gas, and services from the sale of eligible staple foods).

Acceptance of EBT cards may provide a service to concession customers and other park visitors particularly in locations where the concession may provide the only grocery facilities in the region. Park concession personnel is encouraged to talk with its concessioners to determine whether participation in the EBT program would be beneficial and whether the concessioner would be willing to participate in the program.

6.12.7 Paying Reduced Rates and Accepting Items of Nominal Value from Concessioners

Certain allowances and prohibitions are established for NPS employees provide fairness to and avoid conflicts of interest with concessioners through acceptance of reduced rates and accepting items from concessioners.

6.12.7.1 Allowances and Prohibitions

NPS employees may not purchase concessioner goods and/or services at a discount unless such purchase of goods and/or services relates to official business, and/or provided for under the terms of a concession contract. Reduced rates for NPS employees do not apply to employee's family members.

NPS employees may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other item that has monetary value from a concessioner. Employees should consult with their ethics counselor regarding the limited exceptions to the general prohibition on accepting gifts from outside sources.

6.12.7.2 Reduced Rates

Concessioners will be contractually obligated as follows to provide reduced rates to government employees when they are conducting official government business in which the government is obligated to pay for the service or reimburse the employee. These conditions must be described in the concessioner's operating plan and may include:

- ◆ **Lodging for Federal Employees** - Lodging costs to government employees should be at the government per diem rate established in accordance with the Federal Travel Regulation (FPMR 101-7).
- ◆ **Essential Travel for Federal Employees** - Essential travel means that the concessioner service provides the only practicable means of transportation from one point to another. Examples include ferry or plane service. The need for such service may be routine such as the transport of NPS employees to work on a daily basis or a more episodic frequency. Reduced rates for transportation are not dictated by federal regulation and must be determined on a contract-by-contract basis. Such rates charged to government employees by the concessioner may be reduced or no-cost.
- ◆ **Other Services Provided to NPS Employees** - Reduced rates for other concession services must be also be determined on a contract-by-contract basis and may be may be reduced or no-cost. No cost may be particularly applicable when the use of the concessioner's service is not taking space away form a paying visitor. Reduced rates may fall into either of the following categories:

- General Official Business – If there is a definite relationship between the government employee’s official duties and the service provided by the concessioner. For example, a ranger may accept a reduced rate for a river trip to inspect the accumulation of debris along a river bank.
- Concessioner Review Program – If a government employee designated by the superintendent is conducting official evaluations in accordance with the Concessioner Review Program.
- ◆ **NPS Providing Service** – The concessioner will not normally charge a government employee for services in situations in which the NPS is also providing a service to the concessioner or working directly with the concessioner to provide a service or activity for the public. For example, if an NPS employee is placed on a concessioner’s boat for the purpose of conducting an interpretation program, the Service does not pay the concessioner for the NPS employee’s boat trip. Such arrangements must be included as contract terms in the concessioner’s operating plan.

Government employees may accept reduced rates or discounts offered by the concessioner to the general public as long as the terms and/or conditions applicable to the government employee is the same as those for the public. Such discounts may be addressed in the concessioner operating plan although this is not required unless the discount to the public is a contract requirement.

The above requirements do not limit negotiation of price in procurement actions under which the concessioner, separate and apart from its obligations under a concession contract, provides goods or service to the NPS (e.g., providing catering or training facilities or services). The concessioner in such an instance is like any other vendor to the government and is not governed by the concession contract.

6.12.7.3 Documentation for Charging Non-NPS Employees Reduced Rates

If a federal employee that is not Department of Interior federal employee wishes to pay a reduced rate to a concessioner, they must request a letter from the superintendent stating that the federal employee is conducting official business and specifying services for which the federal employee is authorized to pay the reduced rate. The employee must present the concessioner, upon request, his or her identification, a copy of his or her signed travel authorization, and a copy of the superintendent’s letter.

6.12.7.4 Procedures for Payment to the Concessioner in Unusual Travel Situations

In some cases, such as when conducting essential travel, official government business, or concessioner evaluations, an NPS employee may not have an official travel designation. In such circumstances, the NPS employee may not be authorized to use his or her government travel charge card. The employee should work with park administrative personnel to arrange payment for any concessioner service expenses.

6.12.7.5 Acceptance of Food and Items of Nominal Value from Concessioners

The following standards and procedures apply to accepting food and items of nominal value from concessioners:

- ◆ **Official Functions** - In accordance with 43 CFR 20.735-7 (b) (2), an employee may accept:
 - Food and refreshments of nominal value on infrequent occasions in the ordinary course of an official luncheon or dinner meeting or other official meeting or on an inspection tour at which an employee is properly in attendance.
 - Advertising/promotional material of nominal value such as pens, pencils, note pads, calendars, and other similar items.

Special Events - Regulations permit NPS employees to attend infrequent special events sponsored by the concessioner for the purpose of fostering good relations with local communities to obtain the support necessary for accomplishing the NPS mission. At such events, federal employees may accept food and other items of nominal value. The superintendent shall approve employee attendance at all such events. Such an approval must be granted in advance and in writing, and must reflect a conscious determination by the superintendent that the employee's attendance meets applicable criteria. Attendance at such events is acceptable under the following circumstances:

- The employee attends such events on an infrequent basis.
- The event is open to the local community.
- The employee's failure to attend a function could hamper relations with the local community and possibly deprive the NPS from obtaining support to accomplish its mission.
- Public announcements or materials promoting such events should in no manner imply NPS or park sponsorship.

6.13 Concession Utility Management

When the NPS provides a concessioner with utilities (electricity, water, sewer, solid waste removal, and telecommunications) it must charge the concessioner for the actual utility costs in accordance with DO-35B (found on the NPS Office of Policy [webpage](#)).

When the utility costs to the concessioner are higher than comparable utility charges in the private sector, the concessioner may be compensated for that difference. To the extent practical, the preference is to avoid passing these extra costs onto visitors by incurring a franchise fee reduction although utility cost related add-ons (to visitor service rates) may also be applied where necessary. This section addresses the roles, responsibilities, and procedures for managing concessioner utility charges and adjustments. Additional guidance and tools are available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

6.13.1 Setting NPS Utility Rates

A park's facility management division is responsible for setting utility rates. DO-35B contains detailed instructions on the process for setting utility rates. The WASO PFMD provides park-level facilities employees with implementation assistance in the form of cost recovery models, orientation, and training focused on the new procedures for calculating and setting rates.

The park must provide a report documenting the cost basis for rates charged to non-NPS users using a standardized form developed and maintained by the WASO PFMD.

6.13.2 Managing Utility Charges in Concession Contracts

Procedures for to address utility cost in concession contracts based upon whether they were

“new contracts” (i.e., contracts issued after CS policy on the matter was issued in February 2013) and or “existing contracts” issued before that. More specific procedures are provided in the Concession [Rate Administration Guide](#).

6.13.2.1 New Contracts

For all new contracts executed after February 2013, the full cost of utilities to the concessioner including allocated operating and capitalization requirements as provided by PFMD must be accounted for during prospectus development. The minimum franchise fee will be adjusted as necessary to account for the magnitude and impact of these utility costs over the life of a contract.

In the event that a franchise fee reduction to account for utility costs is such that it would severely limit a park's ability to manage its concession operation safely and effectively or would otherwise render a concession contract infeasible, the NPS should compare the concessioner's total utility charges from the NPS expense to industry norms to determine if such costs are abnormal. If a concessioner's utility expenses are projected to exceed the industry norm, the NPS may consider an add-on to concessioner rates for visitor services account for this variance.

During the term of the contract, the NPS may also consider an add on if the utility rates increase significantly above normal inflation and outside industry norms in a manner not anticipated during prospectus development.

Because of the complexity of assessing utility costs and their effects on the concession contract, and to ensure a consistent approach is used, the WASO CS will conduct analysis and assist in the potential add-on determination. A park must request this analysis through its regional CS Program.

If analysis supports an add-on, the regional director must request approval for the add-on from the associate director of business services. This request must include a justification that explains the need for the add-on and documents the park's intended uses of any franchise fees preserved by the add-on. The associate director of business services may approve or deny the request or may approve an add-on amount other than the amount requested.

6.13.2.2 Existing Contracts

Concession contracts executed before February 2013 are considered existing contracts for the purpose of this section. Concessioners operating under these contracts have the potential for increases in NPS-provided utility costs due to DO-35B that were not anticipated or accounted for during prospectus development. Per DO-35B, an annual 10 percent increase in NPS-provided utility rates applies in these cases.

If an add-on was already authorized for such an existing contract, a park may continue to approve such an add-on, if justified. A park's concession program must determine if an add-on is justified by comparing rates for park-provided utilities against the utility rates of concessioner's visitor services rate comparables. If this analysis demonstrates the NPS-provided utility rates are higher, an add-on may be continued to account for the rate difference. This process is consistent with procedures established in the [Rate Administration Guide](#) and historical NPS-provided utility management policy. Note that the park should consider an add-on only after applying the 10 percent annual increase allowed under DO-35B. The superintendent must review and approve the add-on annually.

6.13.3 Managing Utility Rates and Add-ons

The concessioner must be notified of increased utility rates at least 90 days before the charges become effective. Prior to issuance, the park should have analyzed the impact of the rate increase and provide a plan to the concessioner on how the park proposes to address the increase if appropriate. This may include a decision by the park to allow an add-on. The operating plan must be updated to reflect such allowances.

The process for calculating add-ons in accordance with the policies for existing and new contracts above are described in the [Rate Administration Guide](#). The process for distributing add-ons across the concessioner's services, presenting utility add-ons on customer receipts, maintaining and reconciling utility rate records, are also described in the [Rate Administration Guide](#).

For the purpose of calculating sales tax, add-ons are considered revenue and should be taxed. However, Utility add-on revenues should not be included in gross receipts for the purpose of calculating franchise fees. The application of such fees increases the cost to visitors in a manner contrary to the mission of the NPS. WASO has issued separate guidance for reporting add-on charges on the concessioner Annual Financial Report (AFR). This guidance is available in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#) under the Financial Management topic.

6.13.4 Utility Charge Waiver

DO-35B describes the procedures for the waiving utility charges to concessioners for the use of NPS-provided utilities. A utility charge waiver for a concessioner using NPS-provided utilities is an exceptional practice. It may be approved when the visitor service is critical to the NPS but charging full cost for the utility services would eliminate the opportunity for the concessioner to have a reasonable opportunity for profit and passing on the cost to the visitor through an add-on would create an unreasonable fee to the visitor. Due to the exceptional nature of this action, approval is required by the Associate Director of Park Planning, Facilities and Lands in consultation with the associate director of Business Services and associate director of interpretation, education and volunteers.

6.14 Concession Reservation Practices

NPS concessioners may accept reservations and deposits for the visitor facilities and services (accommodations) they provide. Such reservations and deposits must be patterned after those reservation and deposit practices implemented by businesses that are used as comparables in approving its rates. Furthermore, these practices must be designed to ensure:

- ◆ Accommodations in the parks serve the primary purpose of providing public use and visitor enjoyment.
- ◆ Accommodations are available to a broad spectrum of visitors.
- ◆ No particular category or demographic of visitor gains special privileges, whether through group affiliation, prepayment of substantial advance rental, or other means.
- ◆ Alternative business such as tours and conventions are encouraged to use the concession facilities in the offseason and/or when otherwise underutilized to enhance the concessioner's revenues so that it can keep its facilities open for the public.

6.14.1 Reservations General Requirements and Limitations

The following general requirements and limitations apply to concessioner visitor reservations systems and should be documented in the concessioner operating plan:

- ◆ Concessioners may not accept reservations more than two years in advance. The concessioner or the NPS may establish a time limit for advance reservations of less than two years if desired.
- ◆ Waiting lists must be maintained by appropriate service category such as boat slips or long-term trailer spaces customarily rented for continuous occupancy. Vacancies must be offered to persons on the waiting list strictly by date of entry on the list. Pre-payment of rental more than one year in advance in to secure the current rate or a discount is permitted but does not entitle the renter to be advanced on the waiting list.
- ◆ Concessioners may not overbook unless there is a comparable or superior service/facility available for overflow. Any upgrade must be given to the overbooked visitor free of charge. It is preferred that instead of overbooking, concessioners implement a waiting list system whereby the visitor is neither guaranteed, nor charged for, a reservation until the availability of a service/room is confirmed.
- ◆ Concessioners may employ length of stay restrictions consistent with comparables and as approved by the superintendent.

6.14.2 Managing Commercial Groups

Group tours, conventions, and group meetings can benefit visitors, the NPS, and concessioners. Group tours can reduce traffic congestion and provide improved park access to specific visitor demographic groups. Tours, conventions and group meetings can also increase occupancy in the offseason or in underutilized facilities and extend the park visitation season.

6.14.2.1 Group Tours

Concessioners should encourage group tours throughout the season and must balance such group tours with demand from visitors who travel independently. Historic ratios of use by the two types, group tours and independent travelers may be used to understand demand.

Periodically the superintendent and concessioner should review data on group tour bookings and cancellations to ensure that group tours are not impacting individual visitor services. Things to look for include:

- ◆ There are increased independent traveler complaints about the inability to obtain reservations.
- ◆ There is a pattern of group tours having unusually high usage for a particular class of accommodations during the peak season.
- ◆ There is a high rate of cancellations by tour companies, creating a situation in which an individual cannot get an early reservation because the rooms are blocked for tour companies; but late requestors can get rooms because tour companies have cancelled in the interim. A cancellation rate is considered high if it exceeds 40 percent of original bookings.

If such a review indicates group reservation practices are not equitable or abuses exist, then the park must ensure that the concessioner takes measures to correct the situation. This may include:

- ◆ Dealing more vigorously with those tour operators that cause the problem. Possible measures include imposing higher deposit rates, shorter advance reservation times and/or longer cancellation requirements, or terminating business with the problem operator.

- ◆ Maintaining a waiting list of individual visitors whose reservations were denied due to a prior group booking, and giving those individuals priority when group reservations are canceled.
- ◆ Limiting the percentage of all accommodations, or accommodations of a particular class, that group tours can reserve. The percentage limit should be based on historical data and peak periods.

6.14.2.2 Group Meetings and Conventions

Conventions and group meetings are allowed but must not be permitted if they interfere with the general visiting public's use and enjoyment of the park. Convention bookings should not fill all rooms even during off season; a portion of the rooms should be held for the general public based on historic usage patterns.

6.14.2.3 Commercial Group Reservation Approval Procedures

The superintendent and concessioner must agree in writing as to when and under what conditions conventions and group meetings will be permitted. The agreement should address dates, maximum number of rooms or other facilities that may be used for such business, and other special requirements as necessary. The agreement must be predicated on a review of past occupancy statistics, current visitor trends, projected occupancy rates, and other pertinent information. The agreement must be reviewed periodically and revised as necessary. The agreement should be incorporated into the operating plan.

Once the agreement is set, the concessioner may book conventions and group meetings within the criteria established in the agreement without further approval of the superintendent. The concessioner must obtain the superintendent's approval before booking groups outside the parameters of the agreement. The superintendent must determine whether to make the facilities available based on the same type of review that they used in preparing the basic agreement and must convey his or her decision to the concessioner as soon as possible.

Concessioners must keep records on reservations and actual usage for conventions and group meetings that includes the groups booked, dates, number in group, and the number of rooms and other facilities used. The concessioner must provide the superintendent with this information upon request.

6.14.3 Reservation Systems

Reservation system requirements must be specified in the concessioner operating plan. For most concessions, the concessioner must utilize a central computer reservation system with a toll-free telephone number and online capability to accommodate requests for all services for which they offer reservations.

Computerized and telephone reservation systems must provide accurate information to potential visitors and be transparent, easily navigable, and accessible to all potential visitors. The concessioner must make reservations available and accessible to the public without restriction. The concessioner may not impose any restrictions or requirements on any potential visitor's ability to create a reservation, including but not limited to requiring log-ins, creating usernames, or joining clubs or list serves.

If a concessioner's property has fewer than 50 rooms or the concessioner is a smaller recreational service provider, the concessioner may utilize an automated e-mail request in lieu of online reservations as defined in the operating plan.

6.14.3.1 Reservation Website Format

The concessioner's online reservation system must utilize the following steps:

- ◆ Select dates
- ◆ Select facilities or services (e.g., lodge/room type, tours)
- ◆ Payment
- ◆ Confirm reservation

In no circumstance should the potential visitor be required to enter credit card or personal information before seeing room availability. The system must comply with NPS accessibility requirements. Online reservation pages must include the following:

- ◆ Description of facility or service (e.g., brief description of entire lodge as well as a description of each room type).
- ◆ Pictures of service or facilities (e.g., room types).
- ◆ Rates (average published rate or seasonal rates).
- ◆ Availability calendar.
- ◆ Reservations platform (whether direct e-mail or online booking engine).
- ◆ Ability to book Americans With Disabilities Act (ADA) - compliant services or facilities (e.g., rooms).
- ◆ Ability to book at government rates for lodging.

6.14.4 Deposits, Refunds, and Cancellations

A deposit protects the concessioner from loss if a visitor cancels his or her reservation and the room(s) or service(s) that were reserved cannot be refilled by another visitor. Deposits are not intended to serve as an additional income source. Deposit practices should be outlined in the approved rate schedule and documented in the concessioner operating plan.

6.14.4.1 General Deposit Practices

Concessioner deposit practices must be no stricter than those of the businesses used as comparables for rate approval. The following deposit, refund and cancellation requirements will apply servicewide:

- ◆ Concessioners may require a deposit as a condition for issuing a confirmed reservation.
- ◆ The concessioner's approved rate schedule and advertising materials must state the conditions under which deposits will be refunded and/or cancellation fees will be charged.
- ◆ Pertinent portions of the refund policy must be printed in the concessioner's advertising material and the Reservation Confirmation Notice, including the following:
 - Honoring Rates - It is preferred that the concessioner honor rates quoted at the time of booking. If a deposit for an individual reservation does not secure the rates for the facility or services because rates for the services have not yet been approved, the reservation confirmation must state in bold letters "RATES ARE SUBJECT TO CHANGE WITHOUT NOTICE AND ARE NOT GUARANTEED." Additionally, if the rates are not guaranteed, the visitor must be notified of any increase prior to his or her arrival at the park.
 - Advance Notice for Refund – The visitor must be made aware of the method a visitor must use to cancel a reservation and the amount of advance notice that the visitor must provide in order to receive a refund.

- Cancellation Fee – The visitor must be informed of the amount of a cancellation fee, if any, and the conditions applicable to such a fee.
- ◆ Refunds due will be issued within 30 days from concessioner's receipt of the cancellation notice.

6.14.4.2 Deposit Methods

Below are NPS preferred deposit practices for individual reservations. Deposit practices for tour groups may be negotiated by the concessioner and the tour agent subject to the limitations discussed below:

- ◆ The required deposit should not exceed the first day's charge.
- ◆ The rates in effect at the time the visitor submits the deposit should apply to the entire period of the visitor's stay, even if a price increase occurs in the interim.
- ◆ A few hotel operations charge a cancellation fee even if a reservation is canceled before a deadline. The fee supposedly covers the administrative costs of handling the reservation. This practice is strongly discouraged and will require regional approval.

6.14.4.3 Exception for Remote Parks and Special Circumstances

Because of a higher likelihood that a canceled reservation will not be filled when a concession facility or service is sufficiently remote that it requires an uncommon mode of transportation to reach it (e.g., hiking, horse, aircraft, and extended boat trip), a concessioner that provides such a service should be permitted to use a stricter refund policy. Such a stricter refund policy may include a longer advance cancellation time for obtaining a refund, requiring a deposit for the entire reservation period, refunding only a portion of the full deposit, or making the refund conditional on backfilling the cancellation.

6.14.4.4 Protection of Deposit Funds

The NPS cannot guarantee the security of visitors' deposits. Any concession company could cease operations at any time and cause its customers to lose their deposits. The NPS has explored the possibility of requiring concessioners to issue bonds or maintain an escrow account to ensure security of visitor's deposits; however, this practice was deemed infeasible.

6.15 Other Contract Management Practices

This section addresses policy and procedures regarding other aspects of concession operations including advertising, use of the NPS authorized concessioner mark, appropriate merchandise, handicrafts and others.

6.15.1 Concessioner Advertising

Concessioner advertising consists of all concessioner print and electronic publications and promotional materials regarding goods, services, and/or facilities. Advertising includes brochures describing facilities and services, rate schedules, reservation confirmations, radio, television, or newspaper commercials, websites and social media postings, signs, employment circulars and other informational materials issued to or displayed to the public.

6.15.1.1 General Advertising Requirements

Concessioner advertising is allowed in the park if it is for goods, services, or facilities available within the park and is, in the superintendent's estimation, desirable and necessary for the

convenience and guidance of visitors. NPS policy prohibits billboard advertising. Concessioner advertising must include the following information whether it is print or electronic format:

- ◆ Concessioner name and address.
- ◆ Advertising statements clearly indicating the concessioner, not the NPS, is issuing the publication or advertisement.
- ◆ A statement that the concessioner is authorized by the NPS, DOI, to serve the public within the park. The authorized concessioner mark may be used in lieu of this statement.

Some concessioners operate facilities and services that are located in multiple parks or in out-of-park locations such as gateway communities. Concessioners may wish to produce joint advertising materials that provide information on some of these other operations. This may be particularly true in corporate publications and on-line materials. Sometimes these materials do not clearly differentiate between in-park and out-of-park services. Superintendents may approve such joint advertising if the differences between the in-park and out-of-park services are demonstrably clear. If there are concerns about consistency across parks with such decisions, parks or regions can also submit the advertising to WASO CS for WASO review and a recommendation whether to approve.

While in-park facilities and services should be the focus of concessioner advertising, the NPS recognizes the benefits of supporting local communities and other activities in the park. Providing advertising racks to display information on local area hospitality and recreational services is common in the hospitality industry. Racks for local papers containing advertising are also common in some locations such as convenience stores and supermarkets. The superintendent may approve such racks in concession facilities upon the concessioner's request. The park must approve the advertising materials to ensure that they are appropriate. Furthermore, as a federal agency, the NPS must take care to be equitable in allowing access that wish to provide such advertising materials. The park must ensure the concessioner follows a process such as a scheduled sign-up or other means, to ensure fairness to vendors who may wish to provide materials for the racks.

6.15.1.2 Social Media

The concessioner may use Facebook, Twitter, and other social media outlets. The concessioner must provide the layout and general content of the social media site for park review and approval at least two weeks prior to making the site accessible to the public. Parks must approve advertising and promotional content for social media sites if such content is different than content that was previously approved for use in other media. Content containing general information about the area, concessioner, or the nearby communities does not require pre-approval.

The concessioner must monitor content and comments posted by visitors to its social media page(s) and must remove any content that is inaccurate, offensive or irrelevant.

6.15.1.3 Product Advertising

Advertising of product brands and items inside concession facilities is allowed if doing so is consistent with industry practice. However, placing signs either inside or outside an outlet, branding it with product logos, is not allowed. Use of tasteful signage that may include the product logo to advertise the product being sold in the outlet such as "We carry [beverage company brand]" may be authorized.

6.15.1.4 Monitoring of Concessioner Advertising

Chapter 6 describes standards and procedures for evaluating concessioner contractual compliance with advertising requirements through periodic inspections as part of the Concessioner Review Program. Each park should monitor its concessioner's advertising including social media content to ensure accuracy, professionalism, and relevance to the concession operation or park.

6.15.2 Intellectual Property and Marks

The NPS has intellectual property rights to various names and marks. Management practices associated with these are described in this section.

6.15.2.1 Contract-specified Marks

The concession contract includes provisions for granting license to use "marks" associated with the concession contract including all trademarks, service marks and logos and brand identification and indicia used to identify or describe the NPS and/or the park. Licensed marks may include such things as the names of park feature and building names, and others. These marks are identified in an exhibit to the contract.

6.15.2.2 NPS Arrowhead and Associated Marks

The NPS maintains legal rights to the Arrowhead and manages its use. Pursuant to 36 CFR 11, the Arrowhead may not be used by any concessioner in publications, advertising, social media or retail items. the WASSO Office of Partnerships and Philanthropic Stewardship (OPPS) is the office that is primarily responsible for managing the use of the Arrowhead.

The NPS has allowed the use of the Arrowhead in particular graphic configurations for particular purposes including use on retail products under license to the National Park Foundation (NPF). Such retail use was authorized for the 2016 Centennial Mark and may include the use of various other secondary Arrowhead marks over time. These uses are managed by WASO OPPS. Procedures to obtain a license to produce and sell retail products in concessioner stores are established by WASO OPPS in coordination with NPF. Requests for use of such marks by concessioners should be first coordinated with the park to ensure proper procedures are followed.

6.15.2.3 The Concessioner Mark

The NPS concessioner mark is a special mark that incorporates the NPS Arrowhead symbol that designates authorized NPS concessioners and its operations. Concessioners are encouraged but not required to use this mark to demonstrate their contractual affiliation with the NPS as a provider of commercial visitor services for the NPS.

6.15.2.3.1 Authorized Users of the NPS Concessioner Mark

Only concessioners with current contracts in good standing are permitted to use the NPS concessioner mark.

Concessioners who have received an "unsatisfactory" AOR from the previous year and concessioners, whose authorizations have expired or have been terminated, are prohibited from using the NPS concessioner Mark. These concessioners must remove all uses of the NPS concessioner mark from all promotional and informational materials within 30 days of

notification of an unsatisfactory rating or the expiration or termination of the contract.

Entities operating in national parks under a CUA or lease are not authorized to use the NPS concessioner mark.

6.15.2.3.2 Requirements for Use of NPS Concessioner Mark

Concessioners may use the NPS concessioner mark in:

- ◆ Publications.
- ◆ Written advertising.
- ◆ Brochures associated with required or authorized services.
- ◆ Web-based information such as that provided in corporate websites, Facebook, Twitter, and YouTube.
- ◆ Interpretive materials.
- ◆ Broadcasts (e.g. television, film) or other audiovisual materials.
- ◆ Facility signs designed, constructed, or commissioned for official concessioner functions or purposes.
- ◆ Signs on visitor transportation system vehicles, vessels, and aircraft.

Concessioners may not use the NPS concessioner mark for:

- ◆ Materials that concern, address, and/or relate to only non-NPS authorized businesses.
- ◆ Merchandise, souvenirs, and clothing presented for sale to the public.
- ◆ Concessioner uniforms and clothing.
- ◆ Concessioner equipment or transportation equipment not specifically providing authorized visitor services.

6.15.2.3.3 Use of NPS Concessioner Mark on Materials that Market Authorized and Non-Authorized Services

Concessioners that operate businesses both inside and outside the park may use the NPS concessioner mark to provide information concerning the authorized services provided in the park in the same materials that market the other non-NPS authorized services provided outside the park. This approach is permitted but not preferred.

If such an approach is used, the NPS concessioner mark must clearly be associated with only those services authorized by the NPS. To accomplish this clear association, the NPS concessioner mark must be accompanied by additional language clearly and specifically identifying the authorized in-park services. The following represents an acceptable example of such language:

- ◆ Jane Doe Company is authorized within Wonderfalls National Park to provide guided backpacking and day hiking, rental of camping and backpacking equipment.

Concessioners may not use the NPS concessioner mark on materials that concern, address and/or relate-to only non-NPS authorized businesses, goods, or services.

Failure to comply with policy requirements and approved conditions for use of the NPS concessioner mark will be reflected in the AOR, if applicable, and authorization to use the mark may be rescinded.

6.15.2.3.4 Additional Requirements to Use the Concessioner Mark on Visitor Service Transportation Equipment

Concessioners often operate visitor service transportation equipment both inside and outside

the park. Concessioners are prohibited from using the NPS concessioner mark on equipment that is not being used to provide services authorized by the NPS.

Concessioners are authorized to place the NPS concessioner mark on transportation equipment dedicated to providing NPS authorized services. For equipment not exclusively used for NPS concession services, the NPS concessioner mark may be provided on signs that can be removed or concealed when vehicles are not being used for the NPS concession service.

6.15.2.3.5 Procedures to Request the Use of the NPS Concessioner Mark

Procedures to request the use of the NPS concessioner mark include:

- ◆ Concessioners requesting use of the NPS concessioner mark must submit its request to the park CS office in writing. Each request must include a clear description of where and how the concessioner proposes to use the NPS concessioner mark and must provide design layouts that meet the design requirements.
- ◆ The park must update the concession operating plan to reflect the requirements for use of the NPS concessioner mark.
- ◆ The park shall provide the authorized concessioner with applicable graphic identity artwork materials and specifications for use in accordance with the NPS Graphic Identity Framework. The graphic artwork is located in the WASO CS Library.
- ◆ Concessioners may request to use the NPS concessioner mark on corporate materials such as advertising and websites. Concessioners must direct these requests to the Program for review and approval. Approval is subject to all applicable requirements outlined above including association of the mark only with those facilities and services authorized by the applicable concession contract.

6.15.2.4 Intellectual Property Compliance Monitoring

Concessioner compliance with intellectual property requirements under the terms of the contract are is monitored at the park-level through the Concessioner Review Program as described in Chapter 7. This park-level monitoring should cover the concessioner use of contract-specified marks, the Arrowhead and associated marks, and the authorized concessioner mark.

WASO CS coordinates closely OPPS and the DOI SOL to provide training and technical support to parks in determining whether to approve or deny requests from concessioners regarding use of intellectual property and marks and to help determine if there is misuse when parks identify potential concerns.

WASO CS also conducts reviews of federal trademark publications to monitor concessioner intellectual property activities and for any potential misuse of NPS intellectual property and marks.

In the event that a misuse is identified by the park, WASO or otherwise, action may be taken to include the DOL SOL issuing a cease and desist notice or taking more substantial legal action. Misuse is also reflected in concessioner ADM review and AOR.

6.15.3 Merchandise and Handicrafts

NPS policy stipulates that the NPS must approve the nature, type, and quality of merchandise offered by concessioners before it is offered for sale. This section provides specific policies and procedures for planning, selecting, approving, labeling, and displaying merchandise, and describes special conditions applicable for certain authentic Native American handicrafts.

These policies and procedures focus primarily on management requirements applicable to gift and souvenir item merchandise; however, several requirements also apply to convenience and grocery merchandise sales. Chapter 7 provides visitor service standards for these services that reflect these policies and procedures.

6.15.3.1 Merchandise Plan and Approval of Merchandise

Each concession retail operation is required by contract to have a merchandise plan that describes the concessioner's strategy and procedures for providing retail service. The merchandise plan must address retail themes, products types, prices, labeling and display procedures.

The superintendent must approve or reject the merchandise plan

6.15.3.2 Preferred Merchandise

Preferred merchandise are those items that the NPS would like to see sold in concessioner stores because they are consistent with goals for concession services articulated in the 1998 Act and the NPS mission and are likely to enhance the experience for the park visitor. These consists of Authentic Native American Handicrafts, United States Handicrafts, Made in America and other park-related items as follows:

- ◆ **United States Handicrafts** are handmade items produced in the United States using traditional methods and materials, but do not fall under any of the four defined categories of Native American handicrafts. These crafts must be predominantly produced individually under conditions not resembling an assembly line or factory system, and must carry a label of authenticity from the American craftsman or producers.

The term "production crafts" refers to handcrafted items produced in quantity with the individual attention of artisans using individual handcraft processes. In order to qualify as United States handicrafts must be produced using devices or mechanical implements (e.g., potter's wheel, loom, lathe, buffing machine, etc.) that allow the manual skill of the maker or makers to condition the overall shape and design of each individual item.

Jellies, jams, preserves, and other prepared foods, even if "homemade," are not considered United States handicrafts. In addition to the items commonly identified with handicrafts, hand processed photographs, handprints (block prints, silk screen prints, lithographs, etchings) sculptures, and paintings are also considered handcrafted items.

- ◆ **Authentic Native American Handicrafts** – This consist of authentic United States Indian, Alaska Native, Native Samoan, and Native Hawaiian United States handicrafts and also meet the following standards.
 - The item and its components must be made entirely, including any components, by United States Indian, Alaska Native, Native Samoan, and/or Native Hawaiian persons residing in the United States. The use of findings, hand tools, and equipment for buffing, polishing, grinding, drilling, or sewing is permitted. The item must be made only from natural materials, but stabilized or treated turquoise is permissible. No portion of the item can be made by machine except mechanically pressed silver beads. When offered for sale, such items must be labeled "machine-made silver beads."
 - The handicraft must come with a written certification of authenticity supplied by the artist or craftsman that produced it.
 - United States Indian and Alaska Native crafts must also meet the Department of Interior's Indian Arts and Crafts Board definition of such crafts.

- ◆ **Made in America** – This consists of items that are manufactured in the United States. The sale of foreign-made merchandise is discouraged but not prohibited. When U.S.-manufactured merchandise is unavailable, foreign-made products that are finished in the U.S. are preferred. Foreign-made merchandise should not be made available by the concessioner in such quantity that other U.S.-manufactured merchandise is excluded. Foreign-made merchandise should be displayed in a manner that does not conceal or upstage United States products, especially United States handicrafts.
- ◆ **Park-Themed Merchandise** - This consists of retail items that reflect the significance of the park, promote the conservation of the park's resources and values, and evoke the park's interpretive themes and/or the geographical regions in which the park is located.

6.15.3.3 Acceptable Merchandise

The following list is representative of the types of retail items in addition to preferred merchandise that are acceptable for sale in concession retail merchandise stores:

- ◆ Items that identify the park area, park name or popular park feature such as decals, printed images or pictures, pennants, sweatshirts, t-shirts, linens, paper weights, stationery, etc.
- ◆ Commercial or machine-made imitation handicraft merchandise.
- ◆ Replicas of artifacts.
- ◆ Printed materials including books, maps, posters, table mats, etc.
- ◆ Games and toys.
- ◆ Geological merchandise obtained from outside the park boundaries.
- ◆ Convenience items.
- ◆ Grocery products.

6.15.3.4 Unacceptable Merchandise

Although no practicable objective standards can be devised for determining taste, intrinsic value, and other subjective criteria, the NPS and its concessioners must scrupulously avoid displaying or offering for sale any item that persons of normal sensitivity might consider obscene, sexually oriented, suggestive, indecent, blasphemous, profane or vulgar, in ridiculing established institutions or customs, or reflecting a lack of concern for the environment.

Concessioners may not sell any merchandise in violation of laws, regulations, or NPS policies. The superintendent must approve all concessioner retail items prior to offering for sale. Additionally, even if an item is not prohibited, a superintendent may choose to prohibit the sale of the item if he or she feels that the item is inappropriate or locally sensitive. These prohibited items may include biological materials that are not from the park but are indigenous to the region, or items, the sale of which, in the estimation of the superintendent, inadvertently encourage the collection of the item or similar items from inside the park, or inadvertently encourage the collection of the items from outside the park in a manner that could adversely affect the park's natural environment and resources.

The following is a list of items that concessioners may not be offer for sale:

- ◆ Tobacco products, unless expressly permitted in the operating plan.
- ◆ Toy firearms and similar items (e.g., slingshots, paintball guns) not associated with the park themes.
- ◆ Products, especially those that are wearable or displayable, that solely depict a Confederate flag as a stand-alone feature. Books, DVDs, and other educational and interpretative media in or on which the Confederate flag image is depicted in its historical context are allowed if

the Confederate flag image cannot be detached.

- ◆ Merchandise or novelty items containing whole biological specimens (e.g., scorpions, butterflies, snakes, coral) or parts of biological specimens (e.g., teeth, claws, pelts and skins, antlers, seashells, feathers, seeds).
- ◆ Geologic, archeological, petrified wood or fossil items from within the park boundary.
- ◆ Any hazardous, harmful, or illegal merchandise.
- ◆ Items that do not meet legal labeling requirements and items that are mislabeled or otherwise misrepresented as to character or origin (including handicrafts mislabeled as "authentic" or "genuine" Native American handicrafts).
- ◆ Merchandise that is subject to spoilage and has exceeded the producer's specific "Sell By" date.
- ◆ Merchandise displaying an NPS Arrowhead symbol on general merchandise, souvenirs, and clothing unless authorized for sale through appropriate license.

The sale of the following retail items is permitted as exceptions to the prohibition against the sale of biological items:

- ◆ Commercially sold items containing common non-living biological materials from legally authorized sources. Examples include items containing feathers or down insulation and items made of cowhide leather or wood.
- ◆ Food products such as meat and produce from authorized sources, and packaged items like sunflower seeds.
- ◆ Non-living fishing bait originating from an authorized source outside the park. The sale of live fishing bait is not permitted.
- ◆ Replicated artifacts or specimens if they are obvious replicas and clearly labeled as such.

6.15.3.5 Merchandise Labeling and Display

Each item must be labeled and displayed in such a way that does not confuse the visitor as to item's the price or origin. Merchandise labels and displays should effectively enhance a pleasant shopping environment and should not distract from the overall ambiance of the park or its mission. Stores should be well organized and departmentalized to the greatest extent possible. Concessioners should create prominent sale areas and utilize merchandising techniques that promote and encourage the sale of park-preferred merchandise.

Preferred merchandise must be prominently displayed. Wherever possible and appropriate, the concessioner must attach informational tags or shelf signs for the sales items to show the item's relationship to park themes. Hand-labeled or non-professional appearing signs and labels should be used only in emergencies. Professional or computer-generated merchandise display signage is preferred. Specific merchandise labeling and display requirements are as follows:

- ◆ **General Merchandise** - All merchandise must be priced individually or by pricing displayed on or near the item table or shelf. Acceptable price-labeling methods include bar-code tags, stickers, grease pencils, or stringed price tags. Markings must be neatly prepared and attached in a way that does not conceal labels of origin or other identification.
- ◆ **United States Handicrafts and Authentic Native American Handicrafts Labels** - United States Handicrafts must be labeled as 'handmade' or 'handicraft.' Merchandise that meets the criteria established for Authentic Native American Handicrafts must be labeled as Authentic Native American Handicraft. The term "label" means a separate tag, paper, sign, or sticker which marks the item as an authentic Native American Handicraft, so as to distinguish these items from commercially produced merchandise, United States handicrafts, or machine-made replica merchandise. Each Authentic Native American

Handicraft item must have an accompanying written certification of authenticity. To reduce customer confusion, merchandise meeting these handicraft criteria must be physically separated from manufactured facsimiles, novelty items, foreign imports and replicas. The items may be identified by a single informational shelf sign when the entire display is comprised of the same type of Authentic Native American or United States handicrafts.

- ◆ **Imitations and Reproductions** - Replicated artifacts or specimens must be clearly labeled as such. Imitations of authentic Native American handicrafts must be identified in such a way that the purchaser is not misled into believing that the items are Authentic Native American Handicrafts or United States Handicrafts.
- ◆ **Foreign Merchandise** - Foreign imports must be properly labeled in accordance with federal regulation to indicate the origin of manufacture. Pricing labels shall not conceal the country of origin or other identification. Labels should indicate if merchandise is manufactured in multiple countries and identify the countries.
- ◆ **U.S. Made and Finished Merchandise** – Merchandise that meets the applicable criteria should be labeled or signed “Made in America” or “Made in the USA” or “Finished in the USA” in order to promote these items to the public.
- ◆ **Merchandise Fabricated from Biological Materials** – Handicrafts and other retail items containing common non-living biological materials (e.g., feathers or down insulation, cowhide leather, wood, seeds, nuts or flowers) must be properly labeled to indicate that the biological materials were obtained from legally authorized sources and that the biological materials originated outside the park.
- ◆ **Interpretive/Educational Merchandise** - Merchandise that is of interpretive value and of value for natural and cultural education purposes must be prominently displayed. Wherever possible and appropriate, the concessioner should attach informational tags or on shelves for the sales items to show the item’s relationship to park themes.
- ◆ **Geological, Petrified Wood, and Fossil Material Merchandise** – Geological, petrified wood, or fossil material merchandise approved for sale or exhibit by concessioners must be accompanied by appropriate educational material and a written disclaimer clearly stating that such items were not obtained inside park boundaries.

6.15.3.6 Internet Merchandise Sales

Merchandise sales conducted over the internet by the concessioner which relate to or are derived from the concessioner’s park operations are considered within the scope of the contract. They must be conducted in accordance with the contract, operating plan and the merchandise plan including the requirements concerning sale of preferred and acceptable merchandise. Products available on-line must be offered in the concessioner’s in-park shops. Labeling and display should comply with the applicable requirements, as appropriate given the electronic medium. Revenue from these internet merchandise sales is subject to the contract franchise fee payment.

6.15.3.7 Franchise Fee Exemption and Certification of for Authentic Native American Handicrafts

Sales of Authentic Native American Handicrafts are exempt from franchise fees. The NPS only allows such sale to be excluded from the franchise fee computation when they are fully documented, the Authentic Native American Handicraft item is labeled as authentic, and the item’s authenticity can be certified and independently verifiable as United States Indian, Alaska Native, Native Samoan, or Native Hawaiian handicraft.

The concessioner must establish a system for tracking and verifying the total revenues claimed for exemption from franchise fees in order to allow the NPS to check the revenue information

against the concessioner's revenue amounts reported in its AFR.

Concessioners must provide written documentation from the artist, vendor, or supplier certifying that the handcrafted item is an authentic United States Indian, Alaska Native, Native Samoan, or Native Hawaiian handicraft item for these products to be eligible for the franchise fee exemption.

The subject of handicrafts' authenticity and merchandise acceptability is by nature imprecise and honest differences of opinion can arise. Settlement of such differences should be at the park-level is possible but may need to include consultation with persons who possess a specialized knowledge of the topic.

The superintendent may refuse to accept a Certification of Handicraft Authenticity when they have reason to believe the item does not meet the criteria for certification as an Authentic Native American Handicraft. The concessioner and the superintendent may consult with local experts, visit the place of manufacture, consult with other parks or the region, or take any other steps to verify authenticity or facilitate agreement.

Upon receipt of an appeal concerning the certification of an Authentic Native American Handicraft, the Program will arrange for consultation with the Indian Arts and Crafts Board. The Program and the Indian Arts and Crafts Board will agree on a case-by-case basis to determine procedures for resolving appeals. At a minimum, the Indian Arts and Crafts Board will be invited to submit written comments that will be included *verbatim* in a report from the Program to the deputy director, operations. The decision of the deputy director is final.

During resolution of an appeal, the concessioner must hold all franchise fees in escrow which would otherwise be payable on the Authentic Native American Handicrafts. After a decision is made, unless there is a further appeal, the outstanding franchise fees must be paid within 30 days.

Items will be removed from the shelf when the superintendent determines that such items are unacceptable. These items will not be restored unless the concessioner's appeals such action and its appeal is upheld.

6.15.4 Concessioner Personnel Management

The concessioner is required to comply with all applicable laws relating to employment and employment conditions including nondiscrimination, affirmative action, fair labor standards, union activities, and workplace safety. Additionally, the concessioner must provide the employee training needed to provide quality visitor services and up-to-date job skills.

6.15.4.1 Concessioner Compliance Hiring Requirements concerning Equal Employment Opportunity, Nondiscrimination, and Affirmative Action

In addition to applicable laws, concessioners are contractually obligated to comply with nondiscrimination and labor requirements applicable to federal agencies and its contractors, including Executive Orders 11246 and 11375 concerning equal employment opportunity. Concessioners that generate more than \$500,000 in gross receipts and employ more than 50 people must prepare and maintain an Affirmative Action Program within 102 days of contract award. The concessioner must file its Affirmative Action Program plan with the Office of Federal Contract Compliance Programs (OFCCP).

The Affirmative Action Plan will be deemed to have been accepted by the government at the time the appropriate OFCCP field, park, regional, or national office has accepted such plan unless within 45 days thereafter the director of OFCCP has disapproved such plan.

Exhibit B for category I and II contracts and exhibit A for category III contracts set forth the equal opportunity, nondiscrimination and affirmative action requirements that are applicable to concessioners.

6.15.4.2 Union Activities

Concessioners may employ unionized employees. Concessioners must comply with applicable labor laws and the terms of the concession contract.

When conducting contract management oversight activities, park managers must consider which union requirements may apply to the concessioner business. In situations in which a concessioner or a union seeks help or advice, park managers must maintain a posture of neutrality and take no action that could be construed as helping or hindering either the concessioner or the union.

Concessioner compliance with employment requirements including reporting, posting of notices, and planning is evaluated as part of the Concessioner Review Program. In the event of the concessioner's noncompliance with the employment-related clauses of its concession contract or with any employment-related rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the concessioner may be declared ineligible for further federal government concession contracts.

6.15.4.3 Labor Relations and Standards

Standard contract language requires that concessioners comply with all applicable laws relating to employment and employment conditions, including but not limited to those laws set forth in contract exhibits outlining requirements relating to employment and service to the public.

6.15.4.4 Concessioner Employee Training

Concessioners are required to provide employee training programs for concessions personnel to ensure high quality, safe, and environmentally responsible visitor services and comply with applicable laws. Training programs are the concessioner's responsibility. Concessioner employee training programs must orient concession employees to the park environment, park operations and visitor interaction, and particular job knowledge and skills. Specific training requirements are defined in the concession contract.

Superintendents are urged to develop, in cooperation with the concessioner, a park orientation program to accomplish these objectives. It is desirable that the mutual commitment to such a program be documented in the concessioner's operating plan.

Concessioners may be invited to NPS-provided park, regional, or Servicewide training when appropriate. WASO CS maintains some training materials available to concessioners on the [Concessioner Toolkit](#) on the external web site.

6.15.5 Time Sharing Agreements

A time-sharing agreement provides for the use of a specific facility or type of facility during a specific time-period for many future years. Commercial time-sharing agreements that convey ownership (fee simple) of real property are not valid in the NPS because the fee title to real

property on NPS land rests with the federal government. Commercial time-sharing agreements that grant a periodic occupancy right may be legal, but violate the NPS policy against granting special privileges to any category of visitors.

6.15.5.1 Prohibition

Any type of time-sharing agreement designed to provide ownership or periodic occupancy/use of any accommodation or facility for multiple years is prohibited. Existing official agreements, if any, of this nature may be continued for the previously established period but cannot be renewed or extended. No new agreements will be issued. Renewable rental agreements for services such as boat slips and long-term trailer spaces rented for continuous occupancy are not considered time sharing and are not subject to these provisions.

6.15.5.2 Commercial Activities Outside of Concession Operations

Private parties may not advertise in public media the sale, rental, lease, or intermittent ownership or use of equipment (e.g., houseboats, RV) to be housed (e.g., moored, parked) and used within a park. This commercial activity violates 36 CFR 5.3. However, groups of individuals may jointly purchase equipment (e.g., boat) to use within the park, reserve facilities (e.g., a boat slip, room or campsite), or jointly lease property jointly (e.g. houseboat) and share the use of such owned equipment, reserved facilities, or leased property among them. Business firms may also purchase or lease property (e.g., may rent a boat slip) in the park for the recreational use of its employees or associates.

With the approval of the superintendent, concessioners that enter into slip or moorage or other rental agreements with visitors may include in those agreements requirements designed to prevent the violation of the concessions' contract rights by such visitors, and the circumvention of 36 CFR 5.3 by the visitor. If the concessioner detects violations of such requirements, the concessioner may terminate the visitor rental agreement, subject to the renter's right to appeal to the superintendent, whose decision shall be final.

6.15.6 Donations

Donations address two principal areas:

1. Offering and solicitation of donations by concessioners to the Service.
2. Solicitation of donations from visitors by concessioners.

The NPS policy on donations is provided in DO-21: Donations and Fundraising_(found on the NPS Office of Policy [webpage](#)). This section outlines specific requirements related to handling donations in concession contract management.

6.15.6.1 Concessioner Donations to the NPS

NPS policy is to decline direct donations for its parks, projects and programs from Concessioners or those seeking a concessions contract. This does not prohibit an authorized philanthropic partner from accepting donations from a concessioner for NPS projects, nor does it prohibit an authorized philanthropic partner with a Category III Concession Contract for convenience items from donating to a park. Additional conditions may apply if a concessioner is involved in litigation with the DOI or any of its bureaus including the NPS. Parks that have identified potential concerns regarding concessioner donations should contact WASO OPPS.

6.15.6.2 NPS Checkout Counter Program

The NPS Checkout Counter Program (formally the Guest Donation Program) allows concessioners to offer visitors the opportunity to voluntarily make donations to support park projects or programs. Donations that are collected by the concessioner are directed most typically to the NPF or less typically, to the local friends group. These partners then distribute the funds back to park for use.

Historically the Checkout Counter programs were limited to \$1 donations for lodging guests. The scope of concessioner service types, point of donation and visitor donation amounts that may be authorized has expanded. For example, donations by visitors at the time of reservation through on-line systems rather than at checkout could be approved.

Participation in the program by concessioners is voluntary and must not be a requirement of the concessioner's contract. Policies and application and operating procedures related to the Checkout Counter Program are outlined in DO-21: Donations and Philanthropic Partnerships (found on the NPS Office of Policy [webpage](#)) and its associated RM. There is a formal signup and approval process administered through the OPPS.

In addition to filing the application to set up and account and participate, the park must review and approve the policies and procedures whereby the concessioner will implement the Checkout Counter Program prior to program implementation. Concession specialists should confirm that guest donation procedures are in accordance with requirements as part of the Concessioner Review Program. This includes such things as ensuring that the program is properly explained to visitors by check out agents. Questions on the implementation of a concessioner checkout Counter Program may be directed to WASO CS or OPPS.

6.15.6.3 Other Concession-related Donation Activities

The following conditions apply to other unique donation activities:

- ◆ **Donation Boxes in Concessioner Facilities** - Donation boxes may be placed in NPS facilities assigned to concessioners. The donation activity must be authorized by the superintendent and must be conducted in accordance with DO-21. Only donations for authorized fundraising partners may be collected and 100 percent of the funds collected from these boxes must go to the NPS.

Placement of donation boxes should comply with the specifications of the operating plan and must not affect the concessioner's ability to conduct business. The park and the partner should coordinate with the concessioner to meet this objective. The park or donation partner are responsible for responsible for maintaining the donation box, not the concessioner. The box and signage should be professional in appearance, consistent with the décor, and unobtrusive.

Other Concessioner Solicitation and Collection of Donations from Visitors –

Concessioners may promote visitor donation to the NPF or an authorized local friends group at the checkout counter, in in-room materials, and through other printed and on-line materials. Such promotion must be approved by the park. Concessioners cannot, however, collect funds for these organizations from visitors other than through an approved Checkout Counter Program.

- ◆ **Donations Collected for Other Organizations** - Organizations other than authorized fundraising partners such as charities, conservation groups, or organizations supporting a social cause may solicit and collect donations as part of an activity as authorized under DO 21 and DO# 53 Special Use Permits. For example, a health-related organization might conduct a fitness run in a park under a special use permit and designate a location for soliciting and collecting donations during the event. Such permitted donation-related activities should not place any obligations on any concessioner or adversely affect its ability to do business. The park should coordinate with the concessioner on such donation-related activities to meet this objective and help ensure success.
- ◆ **Donations in the “Back-of-the-House”** - Donations to charitable organizations, organizations supporting social causes, and individuals (e.g., a sick employee) may occur internally among concession personnel pursuant to concessioner corporate policies. Solicitations for such donations may not extend to NPS employees or visitors.
- ◆ **Cause-Marketing** – Merchandise being sold in concessioner retail stores provide “cause marketing” (i.e., those where a portion of the proceeds from the sale of the item are donated by the product company to a cause) may be authorized in accordance with the requirements outlined in this chapter.
 - Concessioners may sell merchandise from vendors that donate a portion of its sales to a non-profit organization (e.g., clothing or candy that donates a portion of its proceeds to a conservation group). Such donations may be advertised on the manufacturer’s product label. For example, a portion of the proceeds from the sale of a specific wine will support the X Grizzly Bear Habitat Restoration program. The concessioner may not provide additional signage or labeling, or otherwise highlight or promote the donative aspect of these products as doing so would contradict the policies set forth in DO-21.
 - The concessioner may make its own commitments on the product tag to donate a portion of its profits from the sale of a product to a cause including a third-party organization, the local authorized friends group, or the NPF.
 - Superintendents must approve cause marketing products before the concessioner sells them. In approving or disapproving cause marketing products, Superintendents should consider the authenticity of the organization and whether the cause is consistent with the mission of the park and NPS. Prices for these products must be comparable and not associated with a rate add-on.
- ◆ **Donations through the Sale or “Give-away” of Concessioner Merchandise** - No organization may donate goods and/or services to a concessioner for the concessioner to offer those items free of charge to the public in an effort to promote the organization or its agenda. For example, a non-profit organization may not display and distribute free candy bars or postcards at a concession retail shop. Concession contracts do not authorize such activities. Note that such donations by an organization of goods and/or services might be made to a park, not a concessioner, if conducted in accordance with the requirements of DO-21.

This prohibition does not extend to the sale of merchandise by wholesale vendors to a concessioner at reduced cost (even below market rates) for the concessioner to sell. Such practices are common within the hospitality sector for marketing purposes. Concessioners are prohibited from giving unique recognition through signs or labels to the supplier that

provides such discounted merchandise. The concessioner must use the applicable rate calculation method to determine the rate at which it will sell such discounted merchandise.

6.15.7 Employment by Concessioners and Ownership of or Investment in Concession Businesses

Federal law prohibits NPS employees from using their position to influence or coerce concessioners to provide financial benefits or employment for those NPS employees or other persons with whom they share family, business, or financial ties. For NPS purposes, the applicable regulation is broadly interpreted to mean that each employee's behavior must be such that it does not result in or create the appearance of a conflict of interest, or hinder the employee's ability to remain independent and impartial when dealing with concessioners. NPS employees must diligently avoid any appearance of a conflict of interest or of undue influence or coercion. Further information is provided in the Ethics section in Chapter 2.

6.15.7.1 Concessioner Employment of NPS Employee Family Members

All requests for approval of concessioner employment of NPS employee family members, including spouses or dependent children, shall be in writing and shall indicate the nature of the duties of the NPS employee and that of the family member, as well as the proposed compensation for the family member. Requests that require the approval of the NPS director shall be submitted through the proper channels. No concessioner employment of a NPS employee family member may begin until written approval is received from the appropriate official.

A park employee may not make decisions, approvals, or recommendations related to a particular park's concession activities when his or her spouse or dependent child is employed by a park concessioner in that park. For example, the spouse or dependent child of the superintendent, assistant superintendent, NPS concession management personnel, safety officer, environmental manager, or public health specialist may not be employed by a concessioner in the specific park in which the NPS employee works.

6.15.7.2 Prohibition on NPS Employee Ownership of or Investment in Concession Business

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

6.15.8 Cooperating Associations

Pursuant to the National Park Service Cooperating Association Memorandum of Agreement, Cooperating Associations aid and promote interpretive, historical, scientific and educational activities in National Park System parks in order to enhance visitor appreciation and enjoyment of the park experience. DO-32_(found on the NPS Office of Policy [webpage](#)) provides

requirements applicable to cooperating associations.

6.15.8.1 Authorizing and Managing Cooperating Association Concession Activities

The NPS may authorize a cooperating association to sell visitor convenience items when it is determined to be necessary for the comfort and convenience of park visitors. This authorization is made through a concession contract. This authorization may include permission to provide such services in seasons when concession operations are closed, and in isolated locations where no concessioner or other commercial outlet is readily available. When deciding whether to allow cooperating associations to sell these items, the superintendent should also consider whether the concessioner can provide them as an additional service.

Cooperating associations visitor convenience items sales should be managed in accordance with all applicable concession practices. Superintendents must take the necessary steps to ensure that cooperating association products being sold under their agreement are within the scope of the agreement, that pricing and labeling practices are appropriate, the quality of the services is reviewed, franchise fees are paid and other contractual requirements are met.

6.15.8.2 Sale of Cooperating Association Materials in Concession Operations

Cooperating associations often produce park-related materials such as books, postcards, slides, films and videos. Associations should be encouraged to wholesale these materials to concessioners at appropriate discounts.

6.16 Other Operating Requirements

This section describes concession compliance requirements and associated park responsibilities for addressing other federal, state, and local requirements.

6.16.1 Weights and Measures – Gas and Oil

The superintendent is responsible for assuring the accuracy of any weighing and measuring devices the concessioner uses and for taking appropriate action to correct any defects.

The park may periodically arrange for tests of such devices by an authorized party such as the State Weights and Measures, Standards Offices, or trained and certified park employees. Alternatively, testing by an authorized contractor may also be contractually required by the operating plan.

The concessioner must conduct proper testing if contractually required to do so, and must correct deficiencies in a timely manner. Concessioner performance concerning weights and measures will be addressed as part of the Concessioner Review Program.

The park must be provided with and maintain copies of any testing and certification results as part of its concession management files.

6.16.2 Smoking in Public Buildings

Smoking in NPS concession facilities is regulated under [E.O. 13058: Protecting Federal Workers and the Public from Exposure to Tobacco Smoke in the Federal Workplace](#), 36 CFR 2.21, which pertains to smoking in parks, and DO-50D, *Smoking*. In accordance with these authorities, all

concession facilities must be smoke-free.

Smoking is prohibited as follows:

- ◆ Inside public buildings.
- ◆ Within 25 feet of any entrance or exit primarily accessed by the visiting public. This includes entrances and exits to concessioner managed facilities.
- ◆ Within 25 feet of any entrance or exit, not generally accessed by the visiting public, where smoking would result in smoke traveling through doorways, windows, air ducts, or other openings. This could include non-public entrance and exit areas to concessioner facilities such as back entrances to lodges, restaurants, and dormitories.
- ◆ In shared quarters including government-owned, concessioner-assigned dormitories and housing.

The only allowable exceptions, which the NPS does not encourage, will be specifically designated smoking areas and rooms where allowed by state and local law. These special allowances typically address facilities such as smoking allowed rooms in lodging, and designated areas in restaurants or bars. The sale of tobacco products through vending machines is prohibited.

Superintendents are responsible for making the local decision as to the applicability of these guidelines for each concessioner area. The operating plan may contain additional requirements. NPS concession managers are responsible for ensuring that each concessioner complies with the smoking-related provisions of its contract.

6.16.3 Sales or Use Tax

Concessioners are required to pay sales or use taxes in federal areas within a state as if the area was not a federal area in accordance with 4 U.S.C 105.

6.16.4 Nondiscrimination and Accessibility for Visitors

Concessioners are subject to visitor nondiscrimination and accessibility requirements in accordance with applicable law and as defined in the concession contract. These requirements are contained in contract exhibits C, B, and A for category I, II, and III contracts, respectively.

In accordance with these contractual requirements, concessioners cannot discriminate in the provision of visitor services. Each concessioner must provide reasonable accommodation to visitors, which means that it must strive to maximize access for all visitors by removing barriers that prevent them from sharing the park resources and experiences. This applies to not only facilities but also services and programs. Key areas for consideration for accessibility in concession operations include buildings, vehicles and equipment, publications, reservation systems, housekeeping practices, interpretive programs and others.

Although the basic requirements concerning nondiscrimination and accessibility applicable to concessioners are defined in the nondiscrimination exhibit to the concession contract, park concession specialists should work with their park's facility management and interpretive employees to identify facility, vehicle, equipment, and program requirements. These requirements should be identified in the concessioner's maintenance and operating plans, as appropriate.

Chapter 7 describes standards and procedures for evaluating concessioner compliance with accessibility requirements as part of the Concessioner Review Program.

Guidance and tools for parks and concessioners on managing accessibility in NPS concession operations can be found in the [NPS Commercial Services Policy Library](#) and Concessioner Toolkit on the CS external website. In addition, the NPS Park Facility Management Division (PFMD) maintains an Accessibility Branch that can provide specialized assistance to parks in understanding and addressing concessioner accessibility issues.

6.16.5 Visitor Amenity Services

NPS concessioners may provide various amenities as required or authorized services. These may include items and services such as in-room coffee machines and parking valet services for lodging, ice coolers for small boat rentals, cart services at marinas and others.

A number of visitor amenities are more discrete and may even be independently offered as visitor services. These include scenic viewers, vending machines, electric vehicle charging stations (EVCSs) and wireless internet (WIFI). Compliance requirements and park responsibilities for these services are outlined below.

6.16.6 Scenic Viewers

NPS policy allows viewing devices (pedestal binoculars or telescopes) at appropriate locations within units of the National Park System when the superintendent determines that such devices are desirable for the meaningful interpretation or understanding of park resources. Viewers may be provided by the NPS and assigned to the concessioner to operate, or provided and operated by the concessioner. Assignment, operating and maintenance requirements must be outlined in the concession contract.

NPS-provided viewers will be coin-operated unless the collection of fees is not cost-effective to maintain or the superintendent finds the viewing devices to be such an integral part of the visitor experience that subsidy is warranted.

When such devices are installed and maintained by the concessioner, the superintendent shall approve in writing their number, location, and appropriate maintenance standards, and whether they are to be free or coin-operated. If coin-operated, the superintendent must approve the viewer charge in accordance with NPS concession rate administration requirements. Compliance with operating and maintenance requirements for viewers should be addressed in the concessioner operating and maintenance plans, and monitored during periodic inspections as part of the Concessioner Review Program.

6.16.7 Electric Vehicle Charging Systems

The NPS encourages the installation and operation of EVCSs in parks to support the growing use of electric vehicles by the visiting public as well as to support park and concessioner fleets and employee vehicles. The superintendent determines that such devices are appropriate and desirable. EVCSs may be provided by the NPS and assigned to the concessioner to operate. The equipment may also be approved by the superintendent for installation and operation by the concessioner. Equipment may be donated. Such donations should be coordinated with the WASO OPPS

Concessioner assignment, operating and maintenance requirements for EVCSs must be outlined in the concession contract. There is also associated NPS concession service operating standards for EVCSs. Concessioners may be required to provide the service as a contractual requirement in a new contract or voluntarily take on the operation of the NPS-provided

equipment as a required service during the term of an existing contract.

The NPS requires payment from users for NPS-provided utilities such as electricity in accordance with DO 35B. NPS-provided EVCS equipment will be equipped to monitor electrical utility consumption. The equipment will also be equipped with a system for EVCS user payment. Concessioners will be charged for the electricity used by the equipment. The concessioner may charge users for the service or offer it as a free amenity. The superintendent must approve any EVCS rate that is charged to visitors in accordance with NPS concession rate administration requirements.

Network providers provide remote operating and payment systems and maintenance services for EVCSs. Concessioners may use such contracted services.

Compliance with EVCS operating and maintenance requirements should be addressed in the concessioner operating and maintenance plans, and monitored during periodic inspections as part of the Concessioner Review Program.

6.16.8 Wireless Internet Service

WIFI service is becoming an increasingly more important service for park visitors. A concessioner may be required or authorized to provide this service in its concession contract. The NPS may also provide the service to visitors through a provider through a stand-alone concession contract or other provider agreement. Parks need to check with their region when such plans are underway to ensure contracts and contract amendments are properly executed and other requirements are met such as NEPA and rights-of-way compliance and others.

The superintendent must approve any WIFI fee that is charged to visitors in accordance with NPS concession rate administration requirements. Generally, in most lodging operations in the private sector, WIFI service is provided as a "free" amenity and is the standard for NPS lodging concessioners. This is not the case for all services.

Concessioner compliance with WIFI operating and maintenance requirements should be addressed in the concessioner operating and maintenance plans, and monitored during periodic inspections as part of the Concessioner Review Program.

6.16.9 Vending Machines

Vending machines may be authorized under a concession contract as a stand-alone service or as a required or authorized service under a larger contract. Machines may be purchased, rented, or leased by the concessioner.

Vending machines are subject to Randolph-Sheppard Act requirements as described in Chapter 3.

Vending machines are subject to advertising requirements as described in this section. Vending machine skins may display food and beverage vending company advertising provided that such advertising is discreet. Specialized skins that promote the resources of the park are preferred. However, leased or rented equipment may not provide such options.

Vending machines should be equipped with energy saving features and light pollution controls if located in an exterior area.

The superintendent must approve any vending machine rates that are charged to visitors in accordance with NPS concession rate administration requirements. Concessioner compliance

with vending machine operating and maintenance requirements should be addressed in the concessioner operating and maintenance plans, and monitored during periodic inspections as part of the Concessioner Review Program.

The Presidential \$1 Coin Act of 2005, P.L. 109-145 authorized the creation of \$1 coins commemorating the former presidents of the United States, and promoted the increased circulation of these coins by federal agencies. There is no expiration for this requirement.

By law, vending machines operated by concessioners on federal property are currently required to be designed to accept and dispense the \$1 coin. The Presidential \$1 Coin Act also requires federal entities to display signs and notices denoting such capability where coins or currency are accepted or dispensed, including on each vending machine. All machines (e.g., vending, laundry, or change) that accept currency must accept the \$1 coin.

Any change machines that accept \$5 dollar bills or higher denominations must be able to dispense \$1 coins in change. Cash registers also need to be able to handle this currency.

Not all vendors may have upgraded or activated the appropriate mechanism in the machine. Concessioners that have this equipment may need to contact its vending machine operators to ensure that the machines will accept \$1 coins.

The signs and vending machine decals are available free of charge from the U.S. Mint. Operators can access the U.S. Mint [website](#) to obtain signage and informational materials which will be shipped directly and free of charge.

Compliance with these vending machines operating and labeling requirements should be addressed in the concessioner operating plan, and monitored during periodic inspections as part of the Concessioner Review Program.

6.16.10 Trailer Villages

36 CFR 5.15 prohibits individuals (excluding NPS employees) from residing in park areas except in accordance with a permit or other written agreement with the United States government authorizing such use. However, several residential trailer villages exist within parks.

Trailer villages for housing concessioner employees are generally discouraged and should be approved only if they conform to the park area's development concept plan.

Existing long-term trailer villages occupied by non-NPS employees and that are not concessioner housing may be permitted to continue, and commitments with respect to length of stay will be honored as long as occupancy and use conforms to the rules and regulations established by each superintendent. When current contracts expire, existing trailer villages will be removed unless they are to be operated under terms of no occupancy more than 30 days.

Existing trailer villages may not be expanded except where construction is already underway or commitments have been made. Where existing contracts provide for construction of trailer villages but none exists or is under construction, authorization to proceed will be accompanied by the understanding that there will be no permanent occupancy.

Chapter 7: Concessioner Review Program

7.1 Introduction

The NPS has a three-tiered approach to monitor and evaluate concession operations to ensure concessioners are meeting contractual requirements and providing park visitors with high-quality, safe, sanitary, and environmentally sensitive services in compliance with applicable laws. These are as follows:

- ◆ **Tier 1** - Concessioners are responsible for and contractually obligated to independently develop and implement procedures to monitor, inspect, and evaluate its facilities and operations, and take preventive and corrective actions to remain compliant with applicable laws and meet its contractual responsibilities. The scope of these procedures must account for the size and complexity of the concessioner's facilities and operations, and applicable laws and contract requirements.
- ◆ **Tier 2** - The NPS provides oversight of concession facilities and operations through the Concessioner Review Program.
- ◆ **Tier 3** - The NPS conducts other specialized monitoring, inspection, and evaluation of concessioner facilities and operations to address particular areas of focus. These activities are intended to augment the oversight provided through the Concessioner Review Program. They may cover more technical topics such as public health, integrated pest management, safety, fire prevention, and environmental contamination. These may be ad hoc or periodic depending upon the circumstances.

This chapter focuses on the Concessioner Review Program. This program is developed and maintained by WASO CS and provides a means for parks to systematically evaluate concession operations to assess whether the concessioner is meeting contractual requirements. The program helps ensure park visitors are provided with high-quality, safe, sanitary, and environmentally sensitive services. This quality assurance/quality control process helps the NPS:

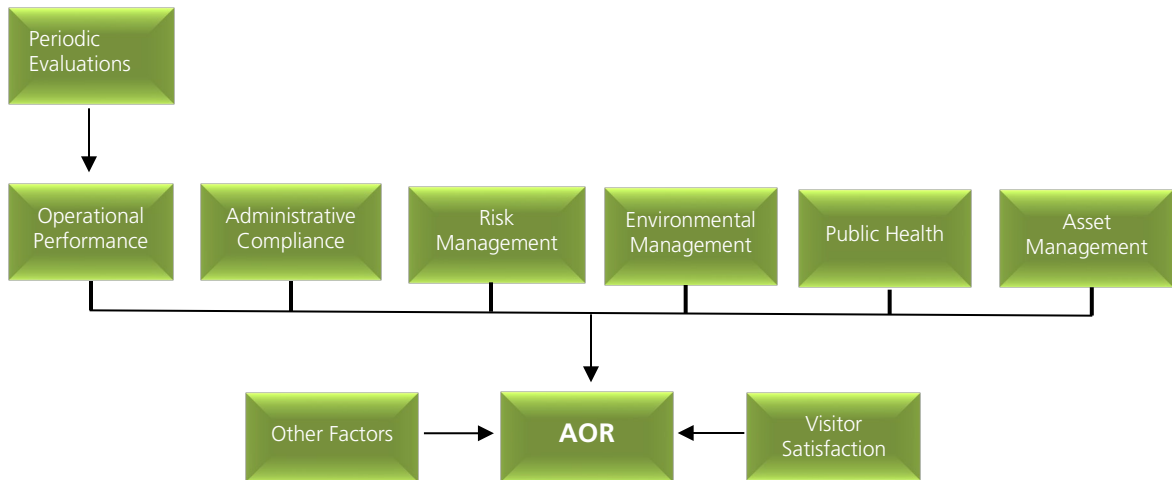
- ◆ Provide concessioner accountability.
- ◆ Identify and correct operational and administrative concerns.
- ◆ Recognize and document good practices and operational performance.

The Concessioner Review Program includes:

- ◆ An operational performance evaluation relative to visitor service standards.
- ◆ Program evaluations for environmental management, risk management, asset management, and public health.
- ◆ An ADM evaluation documenting concessioner adherence to specific conditions of its concession contract.
- ◆ Visitor satisfaction and other performance assessments.

The results of these reviews contribute to a concessioner's AOR. The Concessioner Review Program is periodically updated to reflect current industry practices and provide other program improvements. The policies and procedures contained in this chapter will be updated to reflect these changes. Users may refer to the [NPS Commercial Services Policy Library](#) for the most up-to-date policy changes. The components of the Concessioner Review Program are illustrated in Figure 7-1 below.

Figure 7-1: Concessioner Review Program Components



7.2 Qualifications for Conducting Evaluations

WASO CS is responsible for developing and providing E&P training. Only qualified employees with E&P training may conduct concessioner evaluations. These “NPS evaluators” are typically NPS concession specialists, but evaluations may be conducted by other qualified NPS employees. If the park lacks the personnel to properly conduct the required operational evaluations, the superintendent must seek assistance from the regional office. Assistance may be provided by qualified regional or other park employees. They may also be provided by WASO employees through the servicewide TAP.

The public health evaluation must be conducted by an authorized NPS PHC.

7.3 Visitor Service Standards and Operational Performance Evaluation

Concessioners are expected to provide quality visitor services. This section describes NPS standards and procedures to review concessioner operational performance in delivering these services.

7.3.1 Visitor Service Standards

The NPS maintains service-specific visitor service standards which are used to assess operational performance through periodic evaluations. Originally documented in NPS-48, and more than twenty years old, these visitor service standards were updated and revised in the mid 2010’s. These updated standards are distinguished as “current” service standards”. The current standards are included as requirements in all new contracts. The current service standards may also be adopted for existing contracts where they were not originally incorporated, upon mutual agreement by the park and the concessioner. For existing contracts where use of the current standards are not agreed on by the park and concessioner, or where current standards are not yet promulgated, the NPS-48 standards continue to apply. Both sets of standards are listed below in Tables 7.1 and 7.2 respectively, and are available electronically in the NPS Commercial Services Concession Specialist Toolkit on the Program’s SharePoint [site](#).

Table 7-1: NPS-48 Service Standards and Evaluation Forms

No.	Title
10-603	Food and Beverage Services
10-604	Overnight Accommodations
10-605	Merchandising Operations
10-606	Automotive Service Station
10-607	Transportation Systems
10-608	Marina Facilities
10-609	Horse and Mule Operations
10-610	Ski and Tower Lift
10-611	Supplementary Interpretive Services
10-612	Concessioner Group Employee Housing
10-613	Public Showers and Laundries
10-614	Trailer Villages (short term rentals) and Concessioner Operated Campgrounds
10-615	Trailer Villages (long term rentals)
10-616	Thermal Water Bathhouses
10-617	Water Guide Services
10-618	Boat Rental Operations
10-619	Primitive Rustic Lodging
10-620	Golf Course Operations
10-621	Swimming Pool Facilities
10-623	Mountaineering Guide Services
10-624	Ice Skating Rinks

Table 7-2: Current Service Standards and Evaluation Forms

No.	Title
10-AUT	Automobile Services
10-BOA	Boat Rentals
10-CAM	Campgrounds
10-CRU	Cruise Ships
10-EDR	Employee Dining Rooms
10-EHO	Employee Housing
10-FIS	Fishing
10-FBK	Food & Beverage – Backcountry
10-FBB	Food & Beverage – Bars and Cocktail Lounges
10-FBF	Food & Beverage – Family Casual
10-FBC	Food & Beverage – Fast Casual
10-FBD	Food & Beverage – Fine Dining
10-FBQ	Food & Beverage – Quick Service
10-FBR	Food & Beverage – Rustic Casual
10-FBT	Food & Beverage – Temporary
10-FBU	Food & Beverage – Upscale Casual
10-GOL	Golf Courses
10-GAI	Guided Air
10-GLA	Guided Land Tours
10-H&M	Horse and Mule
10-HOU	Houseboat Rentals
10-HUN	Hunting
10-KEN	Kennels
10-LAU	Laundry
10-LGB	Lodging – Basic
10-LGH	Lodging – Hostels
10-LGM	Lodging – Midscale
10-LGR	Lodging – Rustic
10-LGU	Lodging – Upscale
10-Mar	Marinas
10-CLI	Medical Clinics
10-MOU	Mountaineering
10-PAR	Parking Facilities
10-REN	Rentals – Recreational Equipment
10-RET	Retail
10-SHO	Showers
10-SKA	Skating Rinks
10-SKI	Ski Services
10-SCU	Snorkel and SCUBA
10-SWI	Swimming Pools
10-TEN	Tennis Courts
10-THW	Thermal Water Facilities
10-FER	Water – Ferry Transportation

10-GWA	Water – Guided Airboats
10-GWF	Water – Guided Floats
10-GWT	Water – Guided Tours

Current service standards are subject to ongoing revision and update. Users should refer to the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#) for the most current set of standards.

NPS-48 standards apply to all services for that service type; for example, there is only one set of standards for all food and beverage operations. However, for the current service standards some service types are broken down into 'classes' by level of service which is more consistent with industry practice. For example, food and beverage standards are broken into fine dining, casual dining, and others) The applicable service type and classification of service-level is defined in the contract.

For both the NPS-48 and current service standards, each service-specific standard (e.g., lodging, food and beverage, etc.) is organized by topic, either facility, operational, and further broken down by element (e.g., facility – exterior, service, etc.). Performance criteria are then defined various sub-elements (i.e., grounds, building structure, etc.).

The NPS-48 standards include general standards that address elements such as cleanliness and condition of facility interior and exterior, employee appearance and attitude and posting of operating hours and rates. The NPS-48 standards also include service specific standards address elements unique to a particular service type, such as room amenities for overnight accommodations and draft condition for water guide services.

For the current service standards, several improvements were made to make them more comprehensive and less subjective, and to enhance usability. The changes include the following:

- ◆ The general standards were integrated into each of the service-specific standards.
- ◆ Many the visitor service standards were added that address environmental, public health, or safety topics. These standards augment and support the program standards for the above topics (see appropriate sections below), and provide field-level key-indicators of program implementation (e.g., spill training file is complete, fire extinguishers are properly tagged, etc.).
- ◆ More detailed standard criteria were developed for a few standards elements of particular complexity. Examples include accessibility, animal exclusion and healthy and sustainable food.
- ◆ Definitions were provided for some standard elements to differentiate classes of service. For example, there is a definition to distinguish for the quality of bedding for upscale versus mid-scale, basic and rustic lodging. These definitions may be updated periodically to reflect changes in industry trends, allowing for currency while allowing the standards themselves to remain more "evergreen".
- ◆ Flexibility was allowed in determining whether all standard elements applied. Due to the added level of specificity in the current service standards, some standard elements may not be applicable for a particular visitor service. For example, a park may prohibit televisions in rooms even though providing televisions is a standard for the class of overnight accommodation they offer. Conversely, there may be requirements that go beyond what is in the standards. For example, rustic lodging does not normally require the provision of linens, but for a particular contract, the park may require that level of service. Such exceptions to the standards must be identified in the contract's operating plan.
- ◆ Criteria were added that allow the NPS evaluator to identify other park-specific requirements associated with the visitor service that are identified in the operating or maintenance plan but are not adequately address in the rest of the service standards.

Under both the NPS-48 standards and the current service standards, each standard element is

prioritized based on its level of importance in providing a quality visitor service:

- ◆ Priority A elements are conditions or practices that may significantly impair the services essential to the well-being and enjoyment of visitors or employees.
- ◆ Priority B elements are conditions or practices that may moderately impair the services essential to the well-being and enjoyment of visitors or employees.
- ◆ Priority C elements are conditions or practices that may inconvenience the visitor or employee.

Priority A or B element deficiencies are considered major deficiencies. Priority C element deficiencies are considered minor deficiencies.

The standards may not cover all services. In cases where parks have services for which standards are not developed, the park may prepare draft standards utilizing this program's format. Parks must submit new draft service evaluation standards to the Program for review and approval prior to use, with a copy to the regional chief of concessions.

7.3.2 Periodic Evaluations

The NPS conducts periodic evaluations of concession services to assess concession operations relative to the service standards. This section describes periodic evaluation procedures, corrective action planning, and evaluation follow-up protocols.

7.3.2.1 Periodic Evaluation Frequency, Timing, and Sampling

The number of periodic evaluations a concession operation requires within a year is based on:

- ◆ Previous year's operational performance rating.
- ◆ Length of operating season (year-round or seasonal).
- ◆ Size of operation.

Less frequent evaluations are necessary when the previous year's operational performance rating for that facility was satisfactory or superior (i.e., score of 4 or 5), and the current year's periodic evaluations to date are also above marginal. New concessioners for new contracts which have no prior performance history, are subject to a larger number of evaluations during the first year of operation. Table 7-3 below summarizes the minimum number of periodic evaluations for a concession operation based on their type of operation and rating.) Additional information on the rating process is found in section 7.2.6.)

Table 7-3: Periodic Evaluation Frequency

Type of Operation	Minimum # of Periodic Evaluations required for Superior Performance	Minimum # of Periodic Evaluations required for Satisfactory Performance	Minimum # of Periodic Evaluations required for Marginal Performance	Minimum # of Periodic Evaluations required for Unsatisfactory Performance and New Concessioner
Year Round	1	2	3	4
Large Seasonal (Gross revenue ≥\$250,000)	1	2	2	3
Small Seasonal (Gross revenue ≤\$250,000)	1	1	2	3

The first periodic evaluation for seasonal operations should be conducted shortly after opening, typically within 15 days. Other periodic evaluations should be distributed across the operating season. If the operation only receives one periodic evaluation, that evaluation should be conducted at a time that provides the best representation of the service, typically mid-season. If a park conducts fewer inspections than the minimum required above, this deviation must be explained to the regional CS office, and a narrative provided in the AOR. Failure to complete periodic inspections for a concession during the year limits the NPS’s to fairly assess the concession operation and caps the AOR at satisfactory.

The size and complexity of a concession contract may dictate how many concession service facilities and operations can be practically inspected during a periodic evaluation. For small concessioners, NPS evaluators may be able to assess every concession facility unit and operation at each concession operating location (e.g., each lodging, each food and beverage, etc.). For larger, more complex concession contracts, it may not be possible to evaluate all the units or service operations (e.g., all lodge rooms, all tours) during a periodic evaluation. In this situation, consistent with industry practices, a minimum of 10% of units or operations at each operating location (e.g., 10% of rooms in each lodge, 10% of the tours) should reviewed during each periodic evaluation. It is important to use a representative set of the units or operations in this sampling. To maximize coverage on an overall basis, if sampling, it is a good practice to inspection different units and operations during each periodic.

7.3.2.2 Periodic Evaluation Forms

Periodic evaluation forms are used to record evaluation results. Forms for the NPS-48 standards are available as or downloadable Microsoft Word documents that can be used electronically or printed. Forms for the current service standards are Microsoft Excel forms which can also be printed or used electronically. All forms and instructions are available in the NPS Commercial Services Concession Specialist Toolkit on the Program’s SharePoint [site](#).

Forms for the current service standards have hard-coded standard criteria and priorities. These current service standards also allow the park to add a limited number of criteria that are unique

requirements of a particular concession operating or maintenance plan if they are not adequately covered in the rest of the standards. The park must clearly identify those criteria to the concessioner at the beginning of the year so that the concessioner is fully aware of the criteria against which it will be evaluated for that period. The park should also identify the priority for each of these additional criteria. These criteria may be changed from one operating and maintenance plan requirement to another from year to year to reflect a change in park management emphasis or particular area of concern. Up to four such standards can be added. Finally, there is a single “catch-all” standard that addresses compliance with any other operating and maintenance plan requirement not covered in the standards.

7.3.2.3 Periodic Evaluation Procedures

During the periodic evaluation, the NPS evaluator inspects the concession operation’s facilities and operations. NPS evaluators also review records and interview concession managers and personnel practices. The NPS evaluator compares facilities and operations relative to the applicable standards, identifies meaningful deviations from the standards, and records the results in the appropriate service-specific evaluation form.

A meaningful deviation is a departure from the standard and is either frequent enough to indicate a pattern, or important enough that one occurrence is too many. If a deviation is considered meaningful, it becomes a deficiency.

Regardless of the number of times a given standard is found deficient; the deficiency that results can only be recorded once.

Periodic evaluations must be conducted by qualified NPS employees, as defined above, or by an NPS person under the supervision of a qualified person. Typically, this qualified NPS evaluator is a concession specialist assigned to the park. Additional NPS employees or external technical experts may assist the NPS evaluator in the evaluations. This may include backcountry rangers who observe concession field operations, NPS employees or contractors who conduct mystery shopping, and other NPS employees who may observe concession activities.

Uniformed concessions personnel should use discretion and situational awareness in wearing NPS uniforms during evaluations. Uniforms may be beneficial in some situations to communicate with concession managers and to formalize interactions; but in some situations, in which concession specialists desire to present a less obvious appearance to interact with guests and personnel, inspections may be conducted without a uniform. Uniform practices should conform to park policy.

Concession employees should accompany NPS employees on periodic evaluations. Limited prior notice may be given to ensure that the concessioner or designated representative will be available to accompany the NPS evaluator. Discretion should be used in scheduling the time of inspection (e.g., food service evaluations might not be conducted at busy meal periods but close enough to that period to evaluate the employees in action).

In some cases, the periodic evaluation may require the NPS evaluator participate in the concession service. For example, the NPS evaluator of a horse tour should occasionally go out on a ride. Park personnel should be charged for such services just like any other customer. An exception to this payment requirement may be made when the NPS evaluator is not displacing any customer and there is no significant cost impact to the concessioner from the concession specialist’s participation. An example might be riding on a ferry when the vessel is

not full. Such payment exceptions should be documented in the Operating Plan. When in doubt, the NPS evaluator should pay.

The charges incurred by the NPS evaluator to participate in the concession service during the evaluation are legitimate business expenses. Park personnel should be reimbursed for such expenses. The park concession staff should work with the Superintendent to plan and budget for the concession evaluations. Expenses should be approved in advance. Further guidance on managing such expenses are provided in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

Each periodic evaluation form provides the means to record deficiencies as well as a narrative of observations for the facility or operation. NPS evaluators may record observed BMPs and issues that are not related to a standard, or are not meaningful deviations but may become so if not corrected, as remarks on the form.

To avoid inaccurate counting, when conducting periodic evaluations of facilities that contain several services (e.g., merchandise and food and beverage are located in one building), NPS evaluators should record deficiencies or remarks related to common elements on only one of the service-specific periodic evaluation forms. Common elements may include the facility's exterior, landscaping, and grounds. It is good practice to count and record deficiencies or remarks related to the common elements on the form used to cover the primary service located within the facility. To ensure consistency between evaluations related to recording deficiencies for common elements, NPS evaluators should follow the same procedures on all subsequent concession operation evaluations.

When an imminent safety, environmental, health, asset management or hazard is observed, the NPS evaluator must immediately notify the concessioner's personnel in charge of the operation and the park superintendent. Upon authorization by the superintendent, the facility or operation may be closed until corrective action can be taken to mitigate the hazard.

7.3.3 Additional Sources of Information for Periodic Evaluations

A periodic evaluation is a formal evaluation exercise. There are other ways information is collected that can help determine the quality of the concessioner's operational performance.

Concession specialists are encouraged to observe the concession facilities and services on a regular basis, and make notes that can be recorded in a general observation form designed for this purpose or a field notebook. The notes may be used to support determinations made in the next periodic evaluation, or the Annual Risk, Environmental, or Asset Management Program (AMP) evaluations.

Performance information may also be collected through backcountry rangers. Access to some concession locations and services (e.g., guided water or mountaineering trips) can be difficult. Backcountry rangers or other park employees can be asked to observe the concession operations during their patrols. Template backcountry observation forms and procedures for this purpose are available electronically in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

A second source of information may be a mystery shopper. Concession specialists typically become known to concession personnel, and it can be difficult for them to observe 'typical' concession activities. To overcome this challenge, mystery shopping is encouraged. This may be

conducted by other NPS employees that are less well known to the concession personnel. Others, such as professional consultants, may also be used. These mystery shoppers behave like regular customers. They may eat at the concession food and beverage outlet, shop in a concession store, or even participate in a backcountry guided trip. Several mystery shopper exercises per year are advised for year-round operations, with at least one advised for a seasonal operation. NPS employees can be funded through park funds to conduct such activities in accordance with NPS policy. Template mystery shopper observation forms and procedures are available electronically in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

Other park employees may observe facilities or operating practices during their day-to-day activities. Park employees are encouraged to share these observations with the NPS evaluator, and document their observations in a general observation form. These observations may also become part of the performance record for the concessioner. The concession specialist is also responsible for collating other informal information from the public which may also be documented and support the periodic evaluation.

Pre-season reviews of concession facilities and operations are recommended but not required. The purpose of this review is to make sure the concessioner is preparing its facilities and services in accordance with current contract requirements, including any changes in facilities and operations from the previous season, and will be opening a safe and healthful operation in a timely manner. As such, the review may include a pre-season meeting during which changes in operating and maintenance plan requirements and other topics are discussed. The results of such reviews should be documented, but are not a period inspection or normally part of the formal operational performance review process. However, results of such reviews can help forecast future performance results. When necessary, chronic poor pre-season performance may be addressed in the concessioner's AOR.

7.3.4 Periodic Evaluation Score, Rating, Documentation, and Corrective Action Planning

The periodic evaluation score for each service is determined by assessing the number and severity of observed deficiencies. The total number of A, B, and C priority deficiencies are listed on the periodic evaluation form and the resulting periodic evaluation numeric score is calculated based on the number of deficiencies, as shown in Table 7-4 below.

Table 7-4: Periodic Evaluation Score, Rating, and Criteria

Rating	NPS-48 Score	Current Service Standards Score	Criteria
Superior	5	4.5 – 5	Consistently meets almost all standards
Satisfactory	4	3.5 – 4.4	Almost always meets standards
Marginal	3	2.5 – 3.4	Meets some but not all standards including some higher priority ones
Unsatisfactory	2	1 – 2.4	Generally does not meet many standards
	1		Overall performance is totally inadequate and/or critical element deficiencies

The concessioner must correct deficiencies identified during the periodic evaluation in accordance with the following time frames:

- ◆ Major (Priority A and B) – Must be corrected immediate to no later than 15 days after the concessioner receives notification of the deficiency.
- ◆ Minor (Priority C) – Must be corrected by the concessioner’s next routine operational performance evaluation.

The superintendent has the discretion to set the corrective action timeframe outside these ranges to address the particular circumstance such as the need to act quickly to protect human health and safety, or less quickly to address the complexity of the corrective action.

Upon completing the periodic evaluation, the NPS evaluator and the concessioner should discuss the evaluation and arrive at a specific plan for making corrections within the established corrective action period. Both the NPS evaluator and the concessioner should sign and date the form(s), and the NPS evaluator should give a copy to the concessioner (or its designated representative). The concessioner’s signature does not necessarily indicate agreement; it indicates that the concessioner has seen the rating and that it has been discussed with the concessioner.

If the concessioner refuses to sign the form, the park should transmit the periodic evaluation with a cover memo to the concessioner, using ‘return receipt’ or another delivery confirmation option. This documentation and the receipt should be kept as part of the administrative record.

7.3.5 Periodic Evaluation Follow-up

Where no major deficiencies are noted, the initial periodic evaluation rating and score is the final rating and score. Major deficiencies require follow-up by the NPS evaluator within an appropriate timeframe of the initial evaluation (typically within 15 days) to assess the concessioner’s performance in fixing the major deficiencies -. In the event that the correction time by the concessioner is shorter or longer than the specified corrective action period, follow-ups should be scheduled appropriately. The follow-up should focus on elements that were identified in the initial periodic evaluation. New deficiencies should not be included in the follow-up but should be addressed in the next periodic evaluation and must be corrected in a timely manner.

The periodic evaluation follow-up should be documented on the same periodic evaluation form, and signed and dated by both the NPS evaluator and the concessioner. The NPS evaluator must

appropriately file and provide the concessioner with copies of documentation.

If the concessioner fails to correct major deficiencies within the established correction period, the periodic evaluation score will be downgraded by one numeric score. In addition, the superintendent may also, when circumstances warrant, take one or more of the following actions:

- ◆ Pursuant to 36 CFR 1.5(a), close all or part of the area of a concession operation when necessary for the protection of the area or the safety and welfare of persons or property.
- ◆ Not approve a specific facility's rate increase request(s) until corrections are made.
- ◆ Take other appropriate administrative action(s) in direct relationship to the severity of and/or magnitude of the problem(s).

Prior to assigning a periodic evaluation rating of marginal or unsatisfactory, NPS evaluators should consult with the park superintendent. Parks will also notify the regional chief of an unsatisfactory periodic evaluation rating so the Region is aware of the issue(s) and can provide advice and support if necessary.

7.3.6 Operational Performance Evaluation and Report

The operational performance evaluation is an assessment of how the concessioner did overall in meeting visitor service standards for all the services it offers. It is based upon a compilation of all periodic evaluation scores from the year and results in an overall operational performance score and word rating. This is documented in an operational performance evaluation report (form 10-OPS). The operational performance evaluation form and instructions are available electronically in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

To get a single score and rating for the operational performance rating, concession specialist averages all the years' periodic inspection scores and convert's them to a 1 to 100 score.

Table 7-5: Operational Performance Evaluation Scoring and Ratings

Rating	Average Periodic Evaluation Score	OPS Evaluation Results Range
Superior	4.5 – 5	90 -100%
Satisfactory	3.5 – 4.4	70 – 89%
Marginal	2.5 – 3.4	50 – 69%
Unsatisfactory	1 – 2.4	0 – 49%

Periodic scores may be weighted before being averaged. The NPS evaluator, in consultation with the concessioner, determines the weighting by location/facility and service type. Weighting determinations set the relative importance of each visitor location/facility and service type under the contract at one of the following levels:

- ◆ 1 - Low importance.
- ◆ 2 - Medium importance.
- ◆ 3 - High importance.

Weighting determinations may be equal for all the serves. Weighting determinations may be revisited annually and adjusted as appropriate during the term of the contract.

The weighted scores are averaged and converted to a 0-100% scale to determine the operational performance evaluation report score and rating, as shown in Table 7-5 above. The score from the operational performance evaluation report is transferred to the AOR report and the results must be addressed in the operational performance narrative section of the AOR. Further details on compiling periodic evaluation scores in the operational performance evaluation report are provided in the instructions for form 10-OPS.

7.4 Risk Management Program Standards and Evaluation

This section describes NPS standards and procedures to evaluate concessioner performance in developing and implementing its RMP.

7.4.1 RMP Standards

The NPS has developed RMP standards that reflect the Service's requirement that concessioners develop and maintain an RMP (i.e., safety management system) that reflects the size and complexity of the concession facilities and operations. The standards define elements with performance criteria in ten program areas, as shown in Table 7-6 below. The performance

criteria are consistent with industry standards such as ISO 31000.2009(E). The RMP standards are available electronically in the NPS Commercial Services Concession Specialist Toolkit on the Program’s SharePoint [site](#).

In addition to the RMP standards, individual visitor service standards that the NPS uses to conduct periodic evaluations also contain risk management related elements that NPS evaluators can easily assess as indicators of performance. For example, there are requirements related to smoke and carbon monoxide detectors in lodging standards, safety signage for marina fueling in the marina standards, and emergency radios for mountaineering guide services standards.

Concessioner operating and maintenance plans may also have particular risk management related requirements that become performance criteria. For example, the operating plan may define specific fire inspections that must be accomplished at a facility or requirements for particular step-down plans or procedures. These criteria are addressed in an “other contract requirements” program area.

Table 7-6: RMP Standard Program Areas

No.	Program Areas
1	RMP Scope
2	Responsibility and Accountability
3	Training
4	Documentation and Operational Controls
5	Communication
6	Reporting
7	Inspections and Corrective Action
8	Hazard Incident Investigations and Abatement
9	Management Review
10	Other Contract Requirements

7.4.2 RMP Evaluation Frequency and Timing

The RMP evaluation is conducted once a year. However, the evaluation may include information collected throughout the year from periodic evaluations or other observations. For concession operations that run seasonally, RMP evaluations should be conducted toward the end of the high season but prior to closing of the concessioner’s operation.

7.4.3 RMP Evaluators

The RMP evaluation is conducted by qualified NPS evaluators, typically the concession specialist. These NPS evaluators may be assisted by others who are knowledgeable in risk management such as the park safety officer, park fire program manager, or external technical experts.

7.4.4 RMP Evaluation Procedures

The RMP evaluation consists of an administrative review of the concessioner’s RMP and related procedures and actions. The review is documented in an RMP evaluation report (10-RMP). The

form and instructions are available electronically in the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#). The administrative review includes:

- ◆ Record reviews.
- ◆ Interviews with concession managers and employees.
- ◆ A review of periodic evaluation findings as described below.
- ◆ A review of concessioner performance relative to safety-related requirements in the maintenance and operating plan not otherwise addressed. (As with the periodic evaluation, these must be identified in advance with the concessioner and there is a process for listing and evaluating these using the RMP evaluation form.)

The RMP evaluation IS NOT a comprehensive safety inspection of the concessioner's facilities and operations; the concessioner alone is responsible for such comprehensive inspections as part of its RMP, NPS evaluators should conduct record reviews with the concessioner to ensure they are complete, up-to-date, and consistent with the records specified in the concessioner's RMP, and operating and maintenance plans. Records to consider in this administrative review include:

- ◆ The concessioner's documented RMP, concession contract, operating and maintenance plans.
- ◆ Concessioner safety plans such as emergency action, emergency response, fire prevention, hazard communication, and others.
- ◆ Concessioner in-house safety inspection protocols, inspection logs and reports, corrective action plans, and completion reports.
- ◆ Inspection and certification reports such as those for fire protection system testing prepared by the concessioner's contractors.
- ◆ Concessioner safety-related regulatory reports and correspondence.
- ◆ Concessioner safety training schedules, curricula, and attendance lists.

NPS evaluators should conduct interviews with the concessioner's general manager, safety manager, and other managers or employees with RMP responsibilities. Ad hoc interviews with other concession employees may also be conducted. These interviews should assess:

- ◆ Overall RMP awareness within the organization.
- ◆ Whether the RMP has concessioner management commitment and sufficient allocation of concessioner resources.
- ◆ Whether implementation is in accordance with RMP documentation.

Finally, NPS evaluators should review all periodic evaluations for the year to determine whether any risk management related items were identified during inspections of the facilities and services. These items may indicate a gap in effective implementation of the RMP. For example, smoke detectors found not working or burned out emergency exit signs that are found during a periodic evaluation could be indicative of a deficient RMP inspection program. Concessioner performance in addressing specific maintenance plan or operating plan requirements not otherwise addressed should also be reviewed.

Following these reviews, the NPS evaluator must compare the results against the RMP standards to determine if there are any meaningful deficiencies. The RMP evaluation is conducted using form 10-RMP. Form 10-RMP records deficiencies and provides a narrative of observations.

Particular attention must be paid to ‘special attention’ elements for which failure to comply directly affects the concessioner’s AOR and could be grounds for contract termination. When the NPS evaluator identifies issues that are not specifically related to a particular standard element or are not meaningful deficiencies, or best risk management practices are observed, the NPS evaluator should record them as remarks in the RMP form.

7.4.5 RMP Evaluation Scoring, Rating, Documentation, and Corrective Action Planning

The annual RMP evaluation score is determined by the number of deficient standards and the rating calculated using the Concessioner Review Program Rating Scale (0-100% scale), as shown in Table 7-7 below.

Table 7-7: Program Evaluation Scoring and Rating

Rating	Evaluation Scoring Range
Superior	90 -100%
Satisfactory	70 – 89%
Marginal	50 – 69%
Unsatisfactory	20 – 49%
Unsatisfactory – Critical	0 – 19%

Several standard elements are special attention items (indicated by an asterisk in the 10-RMP). If a concessioner has a meaningful deficiency in one or more of these special attention item standards, the RMP evaluation rating can be no higher than marginal (i.e., no higher than 69%), regardless of the calculated score. If a concessioner has a meaningful deficiency in three or more of these special attention item standards, the RMP evaluation rating can be no higher than unsatisfactory (i.e., no higher than 49%), irrespective of the calculated score.

This rating system is also used for the EMP evaluation, the AMP evaluation, and the ADM evaluations.

The NPS evaluator and concessioner should review, date, and sign the RMP evaluation, and file it in the administrative record.

7.4.6 RMP Evaluation Follow-up

Following the RMP evaluation, the concessioner must develop a corrective action plan to address the identified deficiencies, and the concession specialist must monitor the concessioner’s performance in meeting the corrective action schedule. The RMP evaluation score is not changed as a result of any corrective actions, but any completed corrective actions should be noted in the AOR RM narrative and may be considered when reviewing the AOR rating.

In the event that the concessioner fails to correct critical issues that are identified through the RMP evaluation, the superintendent may close all or part of the concessioner’s operations in accordance with the authority under 36 CFR 1.5(a), or take other appropriate administrative action in direct relationship to the severity and/or magnitude of said issues.

7.4.7 Compiling the RMP Evaluation Rating

The score from the RMP evaluation report is transferred to the AOR report (form 10-AOR), and the results must be addressed in the RM narrative section of the AOR.

7.5 Environmental Management Program Standards and Evaluation

This section describes NPS standards and procedures to evaluate concessioner performance in developing and implementing its EMP as outlined in Chapter 5. These procedures parallel those conducted for the RMP.

7.5.1 EMP Standards

The NPS has developed EMP standards that reflect the Service's requirement for the development and maintenance of an EMP (i.e., environmental management system) that reflects the size and complexity of the concession facilities and operations in accordance with requirements in Section 6 of standard category I and II contracts, and in Section 4 of the standard category III contract developed under the 98 Act. The standards define EMP elements with performance criteria in nine program areas listed in Table 7-8 below. These EMP criteria are generally consistent with industry standards for environmental management systems including ISO 14001:2004. The EMP standards are available electronically from the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#).

In addition to the EMP standards, individual visitor service standards that the NPS uses to conduct periodic evaluations contain environmental management related elements that NPS evaluators can easily assess as indicators of performance. For example, there are requirements related to recycling containers in guest rooms and fences and containment for tanks at auto service stations.

Concessioner operating and maintenance plans may also have particular environmental management requirements that become performance criteria for a sub-element. For example, the operating plan may specify solid waste handling requirements are EMP performance criteria. Such specific requirements are generally covered in one of the elements of the EMP standards.

It should be noted, Contracts under the 65 Law do not have an EMP requirement in the contract unless added to the operating plan. As such, Program areas 1 through 7 in the table below may not apply. There may, however, still be requirements in the contract that should be addressed under Program Area 8, Other Contract Requirements.

Table 7-8: EMP Standard Program Areas

No.	Program Areas
1	EMP Scope
2	Responsibility and Accountability
3	Training
4	Documentation and Operational Controls
5	Communications
6	Reporting
7	Monitoring, Measurement, and Corrective Action
8	Other Contract Requirements

7.5.2 EMP Evaluation Frequency and Timing

The EMP evaluation is conducted once a year. However, the evaluation may include information collected throughout the year from periodic evaluations or other observations. For concession operations that run seasonally, EMP evaluations should be conducted toward the end of the high season but prior to closing of the concessioner's operation.

7.5.3 EMP Evaluators

The EMP evaluation is conducted by qualified NPS evaluators, typically the concession specialist. These NPS evaluators may be assisted by others who are knowledgeable in the area of environmental management such as the park environmental coordinator, park integrated pest management coordinator, or other technical experts.

7.5.4 EMP Evaluation Procedures

The EMP evaluation consists of an administrative review of the concessioner's EMP and related procedures and actions. The review is documented in an EMP evaluation report (form 10-EMP). The form and instructions are available electronically from the NPS Commercial Services Concession Specialist Toolkit on the Program's SharePoint [site](#). The administrative review includes:

- ◆ Record reviews.
- ◆ Interviews with concession managers and employees.
- ◆ A review of periodic evaluation findings as described below.
- ◆ A review of concessioner performance relative to environmental requirements in the maintenance and operating plan not otherwise addressed. (As with the periodic evaluation, these must be identified in advance with the concessioner and there is a process for listing and evaluating these using the EMP evaluation form.)

The EMP evaluation IS NOT a comprehensive environmental audit of the concessioner's facilities and operations. Separate third party environmental audits of concession operations are conducted periodically through the NPS CS EAP. However, the concessioner is ultimately responsible for its environmental performance and is required to conduct its own audits and inspections as part of its EMP.

NPS evaluators should review records with the concessioner to ensure they are complete, up-to-

date and consistent with those specified in the concessioner's EMP and operating and maintenance plans. Records to consider in this administrative review include:

- ◆ The concessioner's documented EMP Concessioner contract, operating and maintenance plans.
- ◆ Step-down environmental plans such as a Spill Prevention, Control, and Countermeasures Plan, Hazardous Waste Management Plan, and others.
- ◆ Corrective action documentation for concession environmental audit findings.
- ◆ Concessioner in-house environmental inspection protocols, inspection logs and reports, corrective action plans, and completion reports.
- ◆ Inspection and certification reports such as those for underground fuel storage tank systems prepared by the concessioner's contractors.
- ◆ Regulatory reports and correspondence related to environmental performance.
- ◆ Concessioner's environmental training schedules, curricula, and attendance lists.

NPS evaluators should conduct interviews with the concessioner's general manager, environmental manager and other managers or employees with EMP responsibilities. These interviews should be used to assess:

- ◆ Overall EMP awareness within the organization.
- ◆ Whether the EMP has concessioner management commitment and sufficient allocation of concessioner resources.
- ◆ Whether implementation is in accordance with EMP documentation.

Finally, NPS evaluators should review all periodic evaluations from the year to determine whether any environmental management related items were found during the physical inspections of the facilities and services. These items may indicate a failure to properly implement a portion of the EMP. For example, improperly secured trash dumpsters at a food and beverage outlet, or poorly maintained secondary containments for marina hazardous materials may indicate deficiencies in concession employees EMP training and/or facility inspection procedures. Concessioner performance in addressing specific maintenance plan or operating plan requirements not otherwise addressed should also be reviewed.

Following these reviews, the NPS evaluator must compare the results against the EMP standards to determine if there are any meaningful deficiencies. The EMP evaluation is conducted using form 10-EMP. Form 10-EMP provides the means to record deficiencies and provides a narrative of observations.

Particular attention must be paid to 'special attention' elements for which failure to comply directly affects the concessioner's AOR and could be grounds for contract termination. When the NPS evaluator identifies issues that are not specifically related to a standard element or are not meaningful deficiencies, or environmental BMPs are observed, the NPS evaluator should record them as remarks.

7.5.5 EMP Evaluation Scoring, Rating, Documentation, and Corrective Action Planning

The annual EMP evaluation score is determined by the number deficient standards and the rating calculated using the Concessioner Review Program Rating scale (0-100% scale), as shown in Table 7-7 above.

The NPS evaluator and concessioner should review, date, and sign the EMP evaluation, and file

it in the administrative record.

7.5.6 EMP Evaluation Follow-up

Following the EMP evaluation, the concessioner must develop a corrective action plan to address the identified deficiencies, and the concession specialist must monitor performance in meeting the corrective action schedule. The EMP evaluation score is not changed as a result of any corrective actions, but any completed corrective actions should be noted in the AOR EM narrative and may be considered when reviewing the AOR rating.

If the concessioner fails to correct critical issues that are identified through the EMP evaluation, the superintendent may close all or part of the concessioner's operations in accordance with the authority under 36 CFR 1.5(a), or take other appropriate administrative action in direct relationship to the severity of and/or magnitude of said issues.

7.5.7 Compiling the EMP Evaluation Rating

The score from the EMP evaluation report is transferred to the AOR report (form 10-AOR), and the results must be addressed in the EM narrative section of the AOR.

7.6 Public Health Program Standards and Evaluation

This section describes NPS standards and procedures to evaluate concessioner performance in developing and implementing its PHP as outlined in Chapter 5.

In accordance with 36 CFR Part 5.10 and DO-83: Public Health_(found on the NPS Office of Policy [webpage](#)), concessioners who prepare food on or off park lands or serve food on parks lands, are subject to inspection for compliance with all applicable health and sanitation requirements. The NPS PHP administers this food safety evaluation process. Evaluations are conducted for both front-country and backcountry food facilities and operations. The results of these food safety evaluations are documented on the concessioner's PHP evaluation and are included as one of the six programs rolled up in the AOR.

The NPS PHP is also responsible for other public health-related evaluations of concession-managed facilities such as pools, thermal baths, water and wastewater treatment systems, and employee housing. Although food safety is the largest segment, concessioner performance in these other areas is also part of the PHP evaluation.

7.6.1 PHP Standards

The PHP uses the U.S. Public Health Service Food Code as the primary standard for conducting its food safety evaluations. The PHP also uses American National Standards Institute requirements for public swimming pools and baths, and criteria established in RM-83(C2) for temporary food events and RM-83F for backcountry operations. The Food Code, other standards, evaluation protocols, and other guidelines are available on the [PHP website](#).

In addition to these PHP standards, individual visitor service standards that the NPS uses to conduct periodic evaluations also contain easily assessed public health related elements that NPS evaluators can easily assess as indicators of performance. For example, there are requirements related to the presence of thermometers in refrigerators in food and beverage

standards, animal exclusion checks for lodging and backflow preventers on hose bibs in marina standards.

Concessioner operating and maintenance plans may also have particular environmental management requirements that become performance criteria for a sub-element. For example, the operating plan may specify spa water treatment system requirements.

7.6.2 PHP Evaluation Frequency and Timing

The number of PHP food safety evaluations and other public health related evaluations is based on the extent of the operations and operating season. At a minimum, each operation will be inspected at least once annually.

Non-routine and investigative evaluations may also be conducted as needed. The purpose for such non-routine evaluations is to assess identified problems, identify potential problems, and otherwise assist the concessioner in meeting PHP standards.

7.6.3 PHP Evaluators

PHCs conduct the PHP evaluations. These PHCs may have commissioned US Public Health Service officers who are regionally based or park-based, or may be park-based civilian sanitarians.

In some parks, food safety and other public health-related inspections may be conducted by others with jurisdictional authority, such as state, county, or city inspectors. These inspections may be used to support the evaluation conducted by the PHC.

In several parks with remote backcountry operations with food service such as multi-day rafting in Grand Canyon National Park, PHCs cannot routinely access the operations to conduct food safety, water and wastewater evaluations. In these instances, concession specialists may conduct inspections using simplified evaluation tools between PHC evaluations.

7.6.4 PHP Evaluation Procedures

PHP evaluations are generally unannounced. The concession specialist should participate in the evaluation. The appropriate concession manager should also accompany the PHC. The concessioner should have a certified food safety manager on duty for its food and beverage operations at all times, and this individual should accompany the PHC on the food safety evaluations. To increase efficiency, concession specialists often conduct periodic evaluations at the same time as the PHP evaluation.

PHP evaluations are completed for each applicable facility/operation (i.e., every restaurant, bar, snack bar, grab-and-go, or backcountry food operation, pool, spa, water or wastewater treatment system, etc.). These evaluations are designed to assess the overall system for public health being employed by the concessioner, as well as to identify specific areas or practices of concern at each facility/operation. The evaluation consists of physical inspections, record reviews and interviews with concession managers and employees. Public health-related deficiencies from periodic inspection results may also be considered.

The PHC uses the NPS food safety report form to record the results of the food safety evaluation of the facility or operation. Forms are also designed and used for the other types of

facilities and operations that are inspected for public health compliance. The reports provide information on the type of inspection (routine, non-routine or investigation), explanations of the regulatory/code violations including their categorization, and citation, any corrective actions completed during the time of the inspection, and other information.

7.6.5 PHP Evaluation Report Rating, Documentation and Corrective Action Planning

The PHC assigns a satisfactory, marginal, or unsatisfactory rating based on the number and type of identified violations for the facility/operation that was evaluated. Deficiencies are noted and categorized as priority, priority foundation, or core, as defined in RM-83(C3). The inspection report is provided to the concessioner and the concession specialist.

When an imminent health hazard is observed, the PHC will assign an unsatisfactory rating and will immediately notify the concessioner's representative in charge of the facility/operation, the concession specialist, the CS regional office, and the director of the NPS OPH. The concession specialist must notify the park superintendent. The park superintendent, not the PHC, is the authority with the jurisdiction to shut down the concession operation.

The concessioner must provide a written action plan to the PHC that addresses the violations noted on the facility/operation PHP evaluation report. Items noted as priority and priority foundation violations must be corrected within the time specified by the PHC, or within 10 days of the notification. Items noted as core violations must be corrected within 90 days. Depending on the nature of the problem, the PHC may approve alternate timelines.

7.6.6 PHP Evaluation Follow-up

The PHC or the concession specialist may perform a follow up evaluation to check for corrections. Failure to correct violations in the recommended manner and time-period may result in the PHC recommending closure of the facility. Failure to complete timely corrective actions may also be reflected in a downgrade on the concessioner's annual PHP evaluation.

7.6.7 Compiling the Annual PHP Evaluation Report

A PHP evaluation report (form 10-PHP) which collates every food safety and other public health facility/operation evaluation report for the year is prepared annually. It documents an overall public health numeric score and word rating. The PHC or concession specialist may complete this report. The PHP evaluation ratings are satisfactory, marginal, or unsatisfactory. A superior rating is not available for the PHP evaluation. Details on the method for determining this rating are provided in the form 10-PHP instructions.

The score from the PHP evaluation is transferred to the AOR, and the results from the PHP evaluation must be addressed in the PHP narrative section.

7.7 Asset Management Program Standards and Evaluation

This section describes NPS standards and procedures to evaluate category I and II concessioner performance in executing its AMP responsibilities as outlined in Chapter 8 in this RM.

7.7.1 AMP Standards

Concessioner AMP performance standards are contained in the concessioner's contract and maintenance plan. AMP evaluation criteria are established in six AMP program areas that reflect key requirements in these concession contract documents. They are listed in Table 7-9 below. While the AMP evaluation provides an indication of the concessioner's asset management performance, but does not cover the entire scope of the AMP requirements applicable to the concessioner under its contract. The AMP evaluation criteria, associated AMP evaluation form (form 10-AMP), and instructions are available electronically from the [NPS Commercial Services Policy Library](#).

In addition to the AMP standards, individual visitor service standards that NPS evaluators use to conduct periodic evaluations also contain some asset management related criteria that NPS evaluators can easily assess as indicators of performance. For example, there are requirements related to the quality of facility interiors and exteriors.

The concessioner's specific maintenance plan (and to a lesser extent operating plan) may also have particular asset management related requirements that become performance criteria. Such requirements are generally covered in one of the AM Program Areas but otherwise may be included as criteria if this is not the case. (As with the periodic evaluation, any specific items to be evaluated against must be identified in advance with the concessioner and there is a process for listing and evaluating these using the AMP evaluation form.)

Table 7-9: AMP Standard Program Areas

No.	Program Areas	Cat I Sections (Exhibit H)	Cat II Sections (Exhibit E)
1	Computerized Maintenance Management System (CMMS)	4	4
2	Inspections	5	5
3	Concessioner Maintenance Plan and Report (CMPR)	6	6
4	Concessioner Project Plan and Report (CPPR)	7	7
5	RMR Plans and Reports	8	8
6	Personal Property Report	9	9/8
7	Other (i.e., Contract-specific requirements)	All	All

7.7.2 AMP Evaluation Frequency and Timing

The AMP evaluation is conducted once a year, typically after the end of the concessioner’s main operating season. However, it may use information collected throughout the year through periodic evaluations, other facility construction or management-related inspections, or other observations.

7.7.3 AMP Evaluators

The AMP evaluation is conducted by qualified NPS evaluators, typically the concession specialist. These NPS evaluators may be assisted by others knowledgeable in the area of asset management such as the park facility manager, or external technical experts.

7.7.4 AMP Evaluation Procedures

The AMP evaluation consists of an administrative review of the concessioner’s AMP. This administrative review includes record reviews, interviews with the concessioner’s managers and employees, and a review of periodic evaluation findings as described below. The AMP evaluation IS NOT a comprehensive inspection of the concessioner’s facilities; the concessioner is responsible for conducting its own such inspections.

Asset management record reviews should be conducted with the concessioner to ensure they are complete, up-to-date and consistent with the records specified in the maintenance plan, annual concessioner maintenance plan, and other applicable documentation. Records to consider in this administrative review include:

- ◆ The concessioner’s contract, and maintenance and operating plans.
- ◆ Output from the concessioner’s CMMS.
- ◆ The concessioner’s annual maintenance plan.
- ◆ The concessioner’s in-house facility management inspection protocols, inspection logs and reports, corrective action plans, and completion reports.
- ◆ Facility inspection and certification reports prepared by the concessioner’s contractor.
- ◆ The concessioner’s asset management-related regulatory reports and correspondence.
- ◆ The concessioner’s asset management training schedules, curricula, and attendance lists.

NPS evaluators should conduct interviews with the concessioner's general manager, facility manager, and other managers or employees with asset management responsibilities. Ad hoc interviews with other concessioner employees may also be conducted. NPS evaluators should use these interviews to assess:

- ◆ Overall AMP awareness within the organization.
- ◆ Whether the AMP has concessioner management commitment and sufficient allocation of concessioner resources.
- ◆ Whether the concessioner's AMP implementation is in accordance with AMP documentation.

Finally, NPS evaluators should review the periodic evaluations for the year to identify whether any asset management related items that were recorded. These items may indicate a gap in the effective implementation of the concessioner's AMP.

Following this administrative review, the NPS evaluator must compare the administrative review results against the AMP standards to determine if there are any meaningful deficiencies. The AMP evaluation form 10-AMP) provides the means to record deficiencies and provides a narrative description of observations.

Attention must be paid to 'special attention' elements for which failure to comply directly affects the concessioner's AOR and could be grounds for contract termination. When the NPS evaluator identifies issues that are not specifically related to a particular element or are not meaningful deficiencies, or best risk management practices are observed, the NPS evaluator should record them as remarks in the form.

7.7.5 AMP Evaluation Score, Rating, Documentation and Corrective Action Planning

The AMP evaluation score is determined by assessing the number of the deficient sub-elements and calculating the rating using the Concessioner Review Program Rating Scale (0-100% scale), as shown in Table 7-7 above.

The NPS evaluator and concessioner should review, date, and sign the RMP evaluation, and file it in the administrative record.

7.7.6 AMP Evaluation Follow-up

Following the AMP evaluation, the concessioner must develop a corrective action plan to address the identified deficiencies, and the concession specialist must monitor the concessioner's performance in meeting the corrective action schedule. The AMP evaluation score is not changed as a result of any corrective actions, but completed corrective actions should be noted in the AOR AM narrative and may be considered when reviewing the AOR rating.

In the event the concessioner fails to correct critical issues that are identified through the AMP evaluation, the superintendent may consider closing all or part of the area of a concessioner's operation in accordance with the authority under 36 CFR 1.5(a), or take other appropriate administrative action in direct relationship to the severity of and/or magnitude of said issues.

7.7.7 Compiling the AMP Evaluation Rating

The score from the AMP evaluation is transferred to the AOR form 10-AOR, and the results must be addressed in the AM narrative section.

7.8 Administrative Compliance Standards and Evaluation

The ADM evaluation is used to assess concessioner adherence to key administrative contract terms. Results of this review are recorded and rated in the ADM report ([form 10-ADM](#)).

7.8.1 Administrative Compliance Standards

Concessioner ADM performance standards reflect the administrative requirements of the contract. These requirements vary between contracts authorized under the 1965 Act and the 1998 Act. ADM evaluation criteria are established various program areas listed in Table 7-10 below. While the ADM evaluation provides an indication of the concessioner's ADM performance, it does not cover the entire scope of the ADM requirements applicable to the concessioner under its contract.

The ADM program areas and associated evaluation report (form 10-ADM) and instructions are also available electronically from the [NPS Commercial Services Policy Library](#).

In addition to the ADM standards, individual visitor service standards that NPS evaluators use to conduct periodic evaluations also contain some ADM-related criteria that NPS evaluators can easily assess as indicators of performance. For example, there are requirements related to checking prices for retail items and approved rates for lodging and other services.

The concessioner's specific contract and operating plan may also have particular administrative requirements that become performance criteria. Such requirements are generally covered in one of the ADM Program Areas but otherwise may be included as criteria if this is not the case.

Table 7-10: Summary of Administrative Compliance Program Areas

1965 Act Contracts/NPS-48 10-630	
1.	Accommodations, Facilities and Services
1.	Plant, Employees, and Rates
	N/A
	N/A
2.	Building and Improvement Program and PI*
5.	Maintenance*
6.	Franchise Fees*
7.	Insurance*
8.	Bond and Lien
	N/A
9.	Accounting Records and Reports*
10.	Assignment or Sale of Interest
12.	Approval of Sub-Concession Contracts
13.	Utilities*

* Denotes a Program Area with Special Attention Elements

1998 Act Contracts/CS Guide 10-ADM	
2.	Services and Operations
3.	Concessioner Personnel
4.	Legal, Regulatory, and Policy Compliance
5.	Concession Facilities and Government Personal Property
11.	Construction or Installation of Real Property Improvement*
	N/A
6.	Tracking and Payment of Required Fees*
7.	Indemnification and Insurance*
	N/A
8.	Accounting Records and Reports*
9.	Other Reporting Requirements
10.	Assignment, Sale, or Encumbrance of Interests
11.	Sub-concessions
12.	Utilities*
13.	Advertising and Promotional Materials
14.	Contract Transition
15.	Other Requirements

* Denotes a Program Area with Special Attention Elements

7.8.2 Administrative Compliance Evaluation Frequency and Timing

The ADM evaluation is conducted once a year, usually after the end of the concessioner's operating year and primary season so it captures a full year of operations. However, the ADM review uses records, reports, plans and observations collected or reviewed throughout the year such as the payment dates for franchise fees, rate approvals, and advertising.

7.8.3 Administrative Compliance Evaluators

The ADM review is conducted by qualified NPS evaluator, typically the concession specialist. These NPS evaluators may be assisted by other park employees. For example, the park administrative officer may assist in an area like as tracking franchise fee payments in the Financial Business Management System (FBMS). Maintenance employees may assist in areas such as monitoring capital improvement, maintenance projects, setting utility rates, and monitoring utility usage.

7.8.4 Administrative Compliance Evaluation and Rating Procedures

The ADM evaluation is accomplished primarily through a review of concessioner records, reports, plans, approvals, payment receipts, and other documentation. Information on ADM issues may also be collected through interviews with concession managers and employees and through observations during periodic evaluations, project inspections, and other activities.

Records to consider in the ADM evaluation include:

- ◆ The concessioner's employer hiring policies and procedures, Affirmative Action Plans and EEO documents.
- ◆ The concessioner's employer training records.
- ◆ Franchise fee, subcontractor and utility payment records for the concessioner.
- ◆ The concessioner's AFRs.
- ◆ The concessioner's Sale and Transfer proposals, associated approvals, and other documentation.
- ◆ Other contractually required plans, procedures and reports.
- ◆ Regulatory reports and correspondence concerning the concessioner.

One aspect of the ADM evaluation is the concessioner insurance compliance check. Due to the complexity of this area of evaluation, a centralized WASO CS process is in place to conduct insurance reviews using insurance experts. Although this concessioner insurance compliance review is centrally managed by WASO CS, park concession specialists are involved in soliciting insurance certificates and other insurance information from their concessioners on an annual basis, reviewing compliance reports that are prepared and submitted to them from the consultant, notifying concessioners of compliance deficiencies, and rating the concessioner's compliance in this area.

The ADM evaluation report (form 10-ADM) is a checklist that guides the ADM evaluation. As ADM standards are assessed, the checklist provides the means to record the concessioner's compliance status and to document narrative findings. As with other standards, a determination that the concessioner is not in compliance with a standard is based on a

subjective assessment by the concession specialist regarding the presence of meaningful deviations from the standards (i.e., contract requirements). These determinations may be frequency or severity-based. As with other program evaluations, attention must be paid to 'special attention' program areas for which failure to comply more significantly affects the concessioner's AOR and could be grounds for contract termination.

7.8.5 Administrative Compliance Evaluation Rating and Documentation

The ADM evaluation score is determined by assessing the number of deficient elements and calculating the rating using the Concessioner Review Program Rating Scale (0 to 100% scale), as shown in Table 7-7 above.

7.9 Annual Overall Rating and Report

An AOR report is required for each contract and provides an annual review of the concessioner's overall performance that considers all the concessioner's program evaluations, its operational performance, and its ADM. This section describes how the AOR is determined, documented, and implemented.

7.9.1 Annual Overall Rating and Report Procedures

The superintendent determines the AOR rating based on a recommendation from the NPS evaluator who is typically the concession specialist. The AOR is derived from the ratings from the operational performance, risk management, environmental management, public health, asset management, and ADM program evaluations. Each program evaluation is weighed equally and the final AOR score and rating result is determined as superior, satisfactory, marginal, or unsatisfactory using the Concessioner Review Program rating scale (0-100% scale), as shown in Table 7-7 above.

If any individual program evaluation is rated unsatisfactory, the highest AOR rating the concessioner can achieve is 'marginal.' If any individual program evaluation is rated marginal, the highest AOR rating the concessioner can achieve is 'satisfactory.' The superintendent has the authority to increase or decrease the AOR rating one measure based on other information such as visitor satisfaction data, or if it is otherwise determined that the AOR rating does not fully reflect the overall performance of the concessioner.

The AOR score and rating is documented in the AOR report (form 10-AOR). The AOR report includes a narrative synopsis of the concessioner's performance in the operational and ADM evaluation areas, and for the concessioner's RMP, EMP, AMP, and PHP. The narrative synopsis highlights strong or weak points identified throughout the year by program area, and records problems which were resolved or which require solutions. The superintendent must explain and changes to the AOR rating, in the AOR report. When the assigned rating meets the criteria for possible the narrative must include recommendation for or against such termination with a justification.

The Regional Concession Chief must be informed of any decision by a park superintendent to assign a marginal or unsatisfactory AOR rating to a concessioner. Furthermore, regional CS offices are encouraged to implement procedures to review AORs with such ratings before they

are signed to provide advice on improvements to the report or the proposed rating. WASO CS is also available to help with AORs upon request as part of its TAP.

After the superintendent has determined the AOR rating, and prior to transmitting the final written AOR report to the concessioner, the superintendent or his or her designated representative is required to provide the concessioner with the opportunity to review the AOR, discuss any unresolved problems, and review the status of the concession operation.

Following review and discussion, the superintendent and concessioner each sign and date the AOR report to signify the concessioner's receipt of the AOR rating. If the park is unable to obtain the concessioner's signature, the concessioner should be sent a copy of the AOR report with the superintendent's signature by certified mail or other receipt requested method, and a copy of the receipt must be kept as part of the AOR administrative record.

7.9.2 Final AOR Report Submittal, Review and Archive

The AOR report and all the associated forms are critical contract management documents which must be appropriately submitted and filed in accordance with the document management requirement described in Chapter 5.

The AOR includes the following:

- ◆ AOR report (form 10-AOR) signed by the superintendent and the concessioner
- ◆ Operational performance evaluation report (form 10-OPR).
- ◆ RMP evaluation report (form 10-RMP).
- ◆ EMP evaluation report (form 10-EMP).
- ◆ ADM evaluation report (form 10-ADM).
- ◆ PHP evaluation (form 10-PHP) (if applicable).
- ◆ AMP evaluation report (form 10-AMP) (if applicable).

The park submits the AOR electronically to a centralized upload site using current WASO specified procedures by April 1 of each year. Regional CS offices must review final packages for completeness. Dependent on regional resources, policies and procedures, regional Programs should also review the content of AORs as part of its quality assurance/quality control program. At a minimum, 10% of the region's AORs should be subject to review. Marginal and unsatisfactory AORs must be reviewed. WASO CS may also conduct a QA/QC review of AORs and advise regions on incomplete or inadequate AORs.

The Regional Concession Chief may recommend revision of the AOR to clarify the narrative basis for the overall rating. In cases where substantial revision is recommended, it may be necessary to resubmit the document to the concessioner for review and signature, and repost the AOR using current WASO specified procedures.

AORs must be filed as part of the concession contract administrative record. The file should also be archived in the WASO CS SharePoint Archive Library.

7.9.3 Disposition of Unsatisfactory and Marginal AORs

When a concessioner's AOR is unsatisfactory for one year or is marginal for two consecutive years, it constitutes grounds for termination of the concessioner's contract. Concessioners with a right of preference in contract renewal may also lose that preferential right if they were rated

unsatisfactory for one year or marginal for two or more consecutive years. Such actions must be taken by the superintendent in consultation with the regional director.

If a concessioner receives a marginal rating, the superintendent must advise the concessioner in writing that if the status of the concessioner's next AOR rating remains marginal, the concessioner's contract may be subject to termination.

7.9.4 AOR Appeal Process

In situations where a concessioner is not satisfied with the AOR rating assigned to it by the superintendent, the concessioner may appeal the assignment of the AOR rating to the regional director.

The concessioner's appeal must be in the form of a letter to the regional director, through the superintendent, stating the issue and enclosing any supporting materials that the concessioner believes is relevant. Upon receipt of the documents, the superintendent must forward the appeal to the regional director along with the park's comments and related materials. The regional director is responsible for making the final determination on the rating.

7.10 Other Inspections and Evaluations

The NPS is responsible for conducting other inspections, evaluations, and audits of concession facilities and operations. These include the following:

- ◆ Environmental audits of concession facilities are required under NPS Management Policies 2006, Section 10.2.4.10. These audits are conducted by WASO CS through the Concession Environmental Audit System. Audits are typically conducted by third party consultants. Parks are responsible for assisting in the coordination of the audits and for audit finding closure monitoring. An audit protocol and other documents outline the criteria, procedures, forms and reports for these audits.
 - ◆ Animal exclusion evaluations of concession lodging facilities are required in accordance with the Director's Memorandum, June 24, 2013. While Tier 1 inspections are conducted by the concessioner and Tier 2 level oversight is conducted as part of the Concessioner Review Program, technical experts (e.g., public health service officer, integrated pest management coordinators) may periodically conduct Tier 3 oversight inspections. There is no standard on the frequency and parks that are subject to such oversight inspections. The decision to conduct such Tier 3 oversight inspections is assessed by the Service based upon risk assessment to determine areas with the greatest exposure.
 - ◆ The park may opt to conduct other reviews to assess concessioner performance in areas of particular importance to the NPS, region, or park. These may include the following:
 - Concessioner fire safety inspections covering concession facilities, fire control and response equipment emergency response procedures, and other aspects of concessioner operations related to fire and life safety.
 - Interpretative program evaluations to assess concessioner's interpretive and informational services regarding appropriateness, accuracy, quality, and the relationship of interpretive presentations to park themes.
- Integrated pest management inspections of concessioner facilities and operations covering vector control and exclusion practices, pesticide application practices, and other aspects related to pet management

Some of these evaluations may provide information to support the various program reviews. For example, concessioner performance in closing environmental audit findings is a criterion in the concessioner's EMP evaluation. These NPS evaluations should be identified in the concessioner's operating plan.

The NPS also reserves the right to enter the concessioner's facilities to conduct an inspection for any purpose when deemed necessary. The results of any evaluations outside the specific Concessioner Review Program components may be considered in the concessioner's AOR. Finally, as noted above, any of these NPS evaluations, inspections and assessments do not supplant the concessioner's responsibilities to implement its own audit, inspection and evaluation procedures to comply with applicable laws, meet contract requirements and implement its own policies, programs and procedures.

Chapter 8: Concession Facilities Management

8.2 Introduction

CS has through concession contracts assigned more than 5,000 federal real property improvements, such as buildings, roads, trails, parking lots, and utilities to concessioners for the purpose of providing visitor services. The U.S. government retains the title to and ownership of all real property improvements assigned to concessioners. Concessioners are responsible for maintaining these real property improvements in accordance with the asset management terms of its concession contract. The term “Concession Facilities” include all areas of land and real property improvements owned by the government that are assigned to or constructed by the concessioner under the concession contract. Real property improvements are the equivalent of assets and will be referenced as assets in this chapter.

CS’s asset management business practices must meet the programmatic goals of both the Program and PFMD. Since PFMD is vested with servicewide asset management and reporting responsibility, the Program aligns its asset management business practices to fit within PFMD’s overall objectives. Parks provide oversight to ensure concessioners are maintaining concession facilities appropriately and in accordance with all laws, regulations, and policies. This includes meeting all expected maintenance requirements and addressing DM. As a result, the overall condition of assets will be sustained or improved.

Successful communication between the park and concessioner is crucial, and relies on a clear and well documented understanding of the various terms and conditions under which the concessioner must operate and provide visitor services. In addition, the interdisciplinary nature of asset management merits close collaboration and cooperation with wider NPS program areas, representatives of which can provide the expertise and experience needed to accomplish service wide programmatic goals and objectives in areas such as facility maintenance (FM), cultural and natural resource protection, safety, and park operations

8.3 Facility Management Authorities

In addition to the general authorities related to concession management, the following citations of applicable laws, policies and regulations relate specifically to concession facility management. Links to web-based copies of these documents are provided where available.

8.3.1 Laws and Acts

- ◆ [Executive Order 13327](#): Federal Real Property Asset Management
- ◆ [Executive Order 13423](#): Strengthening Federal Environmental, Energy and Transportation Management
- ◆ Americans with Disabilities Act 1990 (ADA) ([P.L. 101-336](#))
- ◆ Government Performance and Results Act of 1993 (GPRA) ([P.L. 103-620](#))
- ◆ National Environmental Policy Act of 1969 (NEPA) ([P.L. 91-190](#))
- ◆ National Historic Preservation Act of 1966 (NHPA) ([P.L. 89-665](#))

8.3.2 Regulations

- ◆ [40 CFR Chapter V Parts 1500-1508: NEPA Regulations](#)

8.3.3 Policies

- ◆ [Director's Order 10a: Design and Construction Drawings](#)
- ◆ [Director's Order 10b: Drawing and Map Numbers](#)
- ◆ [Director's Order 12: Conservation Planning, Environmental Impact Analysis, and Decision-making](#)
- ◆ [Director's Order 58: Structural Fire Management](#)
- ◆ [Director's Order 80: Real Property Asset Management](#)
- ◆ [Director's Order 90: Value Analysis](#)
- ◆ [NPS Management Policies 2006](#)
 - Chapter 8: Use of the Parks
 - Chapter 9: Park Facilities

CS has through concession contracts assigned more than 5,000 federal real property improvements, such as buildings, roads, trails, parking lots, and utilities to concessioners for the purpose of providing visitor services. The U.S. government retains the title to and ownership of all real property improvements assigned to concessioners. Concessioners are responsible for maintaining these real property improvements in accordance with the asset management terms of its concession contract. The term "Concession Facilities" include all areas of land and real property improvements owned by the government that are assigned to or constructed by the concessioner under the concession contract. Real property improvements are the equivalent of assets and will be referenced as assets in this chapter.

CS's asset management business practices must meet the programmatic goals of both the Program and PFMD. Since PFMD is vested with servicewide asset management and reporting responsibility, the Program aligns its asset management business practices to fit within PFMD's overall objectives. Parks provide oversight to ensure concessioners are maintaining concession facilities appropriately and in accordance with all laws, regulations, and policies. This includes meeting all expected maintenance requirements and addressing DM. As a result, the overall condition of assets will be sustained or improved.

Successful communication between the park and concessioner is crucial, and relies on a clear and well documented understanding of the various terms and conditions under which the concessioner must operate and provide visitor services. In addition, the interdisciplinary nature of asset management merits close collaboration and cooperation with wider NPS program areas, representatives of which can provide the expertise and experience needed to accomplish servicewide programmatic goals and objectives in areas such as FM, cultural and natural resource protection, safety, and park operations.

This chapter outlines the procedures implemented for concession asset management to address the scope of concession facilities and associated programmatic goals, oversight and management responsibilities of the Service.

8.3.4 Concession Contracts and Asset Management

Parks define the concessioner's asset management contractual requirements and provide oversight to ensure that the concessioner is in compliance with the asset management related terms of the concession contract. Concessioners are responsible for the maintenance of all

assigned concession facilities as defined in its concession contract.

The NPS issues three types of concession contracts category I, II and III which are described below. Assets are generally assigned to the concessioner only under category I and II concession contracts.

- ◆ [Category I contracts](#) are used when the concessioner will operate on assigned land and is assigned federal assets in which the concessioner holds or will hold LSI, and/or will be required or allowed to construct or install capital improvements in which the concessioner may acquire LSI.
- ◆ [Category II contracts](#) are used when the concessioner will operate on assigned land and is assigned federal Real Property Assets, but does not hold any LSI in the assigned assets and is not authorized under the contract to construct or install capital improvements.
- ◆ [Category III contracts](#) are used when the concessioner is not assigned lands or federal assets. Many outfitter/guide operations are authorized by category III contracts. Asset management responsibilities outlined in this chapter do not apply to category III contracts.

Contract language specific to asset management may vary from contract to contract. To provide appropriate oversight, it is important to read and understand the asset management requirements of each individual contract.

8.4 Asset Management

Asset management covers a breadth of procedures and practices to construct renovate repair and maintain facilities. Program requirements are dictated by the contract and various exhibits including the maintenance plan. This section describes these activities.

8.4.1 Asset Life Cycle and Contract Life Cycle

The asset life cycle has six phases:

1. Plan
2. Design
3. Construct
4. Operate and Maintain
5. Recapitalize
6. Dispose

Each of these phases requires distinct asset management activities. During the first three phases (plan, design, and construct), the park and concessioner may plan, design and/or construct a new asset. During the Operate & Maintain phase, the concessioner performs RM, PM, and CR and cures DM. During the Recapitalize and Dispose phases, the park and/or concessioner may renovate or dispose of an asset.

The contract life cycle has three phases:

1. Prospectus Development
2. Contract Management
3. Contract Transition

Similar to each phase of the asset life cycle, each contract life cycle phase mandates specific

asset management activities. For example, a CA is performed during the prospectus development phase while an inspection is performed during the contract management phase. Asset and contract life cycles are independent of each other. One asset may be in the Operate and Maintain phase during prospectus development while another is in the Recapitalize phase.

8.4.2 Work Types and Subtypes

Concessioner maintenance responsibility is divided into two work types, FM and FO.

FM refers to any activity that sustains the design life of assets, including RM, PM, DM, and CR. The park documents the concessioner’s FM responsibilities in the maintenance plan.

FO activity includes housekeeping, grounds keeping and the daily operation of any mechanical equipment or utility such as water, sewer, and electricity. The park documents the concessioner’s FO responsibilities in the operating plan.

FM is divided into work subtypes (RM, PM, DM, and CR) that are the planned work required to preserve facilities so they may be used for their designated purpose over an intended service life. Work subtypes provide a more granular definition of the maintenance work, and are often related to specific fund sources. The use of work subtypes is required in the Facility Maintenance Management System (FMSS). The four major work subtypes are defined in the table below.

Table 8-1: Work Subtypes

Work Subtype	Example	Frequency
Preventive Maintenance (PM)	Typically includes inspection, lubrication, and adjustment.	Typically, 1 year or less
Recurring Maintenance (RM)	Typical projects include painting, pump and motor replacement, cleaning, repair and replacement of lighting, engine overhaul, replacement of carpeting, and refinishing hardwood floors.	Greater than 1 year
Component Renewal (CR)	Typical projects include fountains, building frames, window frames, sheathing, subfloors, drainage, building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and rehabilitation of components of historic Concession facilities.	Greater than 7 years
Deferred Maintenance (DM)	Typical projects include repairing broken window, reattaching loose fixtures, securing fasteners, unclogging drains, rebuilding dripping valves, repairing insulation, repairing carpet seams.	N/A

8.4.3 Funding Sources

Concessioners are contractually obligated to fund maintenance activities concerning the concession facilities. Funding sources for this maintenance may differ by contract type through specific terms within the concession contract. Any required or recommended level of funding for a particular fund source as stated in the concession contract is a minimum amount. The concessioner is responsible for meeting all required FO and maintenance requirements for its concession facilities, regardless of available funding.

Maintenance requirements are generally funded through three concessioner fund sources:

- ◆ RMR
- ◆ Concessioner capital funds
- ◆ Concessioner operating funds

Maintenance items that do not qualify for the use of RMR funds are classified in the concessioner Annual Financial Report (AFR) as either a repair and maintenance expenses or as capital expenditures. Unlike the RMR, capital expenditures or expense maintenance items are not funded through a specific, accumulating fund. Instead, they are a classification in the financial report to describe the purpose and treatment of money that was expended on maintenance. In the cases in which the contract does not require a RMR, the concessioner must use concessioner operating funds for CR.

The minimum amount of funding requirements for maintenance expense is rarely identified in a contract. FM activities, such as PM, RM, and all repair items (e.g., DM) are included in maintenance expense.

(See the section on RMR in this chapter for additional information)

Other concessioner funds are used when capital improvements are required or the RMR is not sufficient to fund CR needs.

The charts below summarize category I and II contract maintenance work activities, funding sources and potential LSI impacts.

Table 8-2: Category I Work Categories and Fund Sources

Work Categories	Fund Source
Facility Operations - Custodial	Concessioner Funds - Operating Expenses
Facility Operations - Housekeeping	Concessioner Funds - Operating Expenses
Facility Operations – Custodial	Concessioner Funds - Operating Expenses
Facility Operations – Grounds Keeping	Concessioner Funds - Operating Expenses
Facility Operations – Waste Management	Concessioner Funds - Operating Expenses
Facility Management – Preventive Maintenance (PM)	Concessioner Funds - Maintenance Expenses
Facility Management – Recurring Maintenance (RM)	Concessioner Funds - Maintenance Expenses
Facility Management – Repair (Scheduled and Unscheduled)	Concessioner Funds - Maintenance Expenses
Component Renewal (CR) (Design Life > 7 years)	Concessioner Funds – Repair and Maintenance Reserve (RMR)
Capital Improvement - Fixtures	Concessioner Funds – Results in Leasehold Surrender Interest
Capital Improvement – Major Rehabilitation	Concessioner Funds – Results in Leasehold Surrender Interest
Capital Improvement – New Construction	Concessioner Funds – Results in Leasehold Surrender Interest

Table 8-2: Category II Work Categories and Fund Sources

Work Categories	Fund Source
Facility Operations - Custodial	Concessioner Funds - Operating Expenses
Facility Operations - Housekeeping	Concessioner Funds - Operating Expenses
Facility Operations – Custodial	Concessioner Funds - Operating Expenses
Facility Operations – Grounds Keeping	Concessioner Funds - Operating Expenses
Facility Operations – Waste Management	Concessioner Funds - Operating Expenses
Facility Management – Preventive Maintenance (PM)	Concessioner Funds - Maintenance Expenses
Facility Management – Recurring Maintenance (RM)	Concessioner Funds - Maintenance Expenses
Facility Management – Repair (Scheduled and Unscheduled)	Concessioner Funds - Maintenance Expenses
Component Renewal (CR) (Design Life > 7 years)	Concessioner Funds – Repair and Maintenance Reserve (RMR)
Capital Improvement - Fixtures	Non-Concessioner Funds (e.g., ONPS or other federal fund sources)
Capital Improvement – Major Rehabilitation	Non-Concessioner Funds (e.g., ONPS or other federal fund sources)
Capital Improvement – New Construction	Non-Concessioner Funds (e.g., ONPS or other federal fund sources)

Parks sometimes take on some maintenance responsibilities to avoid incurring LSI (when a contract cannot support the investment of funds), to ensure the historic fabric of an asset is preserved and to construct capital improvements under category II contracts. Parks have used many NPS funding sources to accomplish this, such as 80% franchise fees, Federal Lands Recreation Enhancement Act (FLREA) funds, and line item construction funds.

8.4.4 Condition Assessments

A CA is an inspection of concession facilities that occurs during prospectus development. CAs are mandated by Executive Order (E.O.) 13327 and supports the 1998 Act requirement that the NPS has specific real property information for its assets to support the Program in the development of new concessions prospectuses, and to assist in the management of existing concessions contracts. Information collected during a CA includes:

- ◆ Current asset condition.
- ◆ Outstanding DM and costs to cure.
- ◆ Life cycle requirements and costs to maintain the assets over the next contract term.
- ◆ Depreciation for PI and LSI negotiation purposes.
- ◆ LSI baselines for future investments.

This information provides key information for the purposes of performing financial analysis, identifying RMR requirements, and considering potential concessioner funded investments. CA information, once approved is migrated to FMSS.

The WASO Program, Asset Management Branch serves as the COR for all prospectus development CAs. The most current version of the WASO Program CA scope of services (SOS) must be used for all prospectus development CAs. COR approval is required prior to removing or revising any SOS requirements. WASO Program IDIQ CA contractors must be used to ensure the consistency of information collected, reduce training costs and meet deliverable review deadlines.

The WASO Program Asset Management Branch (in consultation with the park and region), must review all prospectus development CAs over five years old to determine if the CA data is still relevant to the prospectus development process.

The regional chief must submit requests for prospectus development CA waivers and the WASO program chief must approve the waiver before it can be granted.

(See Chapter 4 for additional information on prospectus development)

8.4.5 Inspections

An inspection is a walkthrough of concession facilities by the park and concessioner to identify “obvious and apparent” deficiencies, verify the completion and quality of work, and document asset condition. Parks without asset managers should engage PFMD employees to assist with the inspection.

The goal of the inspection is to ensure the concessioner is meeting the asset management related terms of the concession contract and to identify work that was or must be completed. The inspection should result in a mutual understanding of work plans and maintenance needs between the park and concessioner.

Parks should inspect concession facilities at a minimum once per year. Parks with seasonal operations should conduct inspections as part of the pre-season walk through to that the concessioner has an opportunity to address any potential issues before opening for the season. Parks should conduct a follow-up inspection at the end of a season to identify any deficiencies that the concessioner can cure during the off-season. The outcome of each inspection should be a full understanding of the current facility’s needs, an updated work order list for the maintenance plan, and information to incorporate into the periodic evaluations and AOR.

8.4.6 Repair and Maintenance Reserve

The RMR is a reserve to fund (on a project basis) CR that is non-recurring within a seven-year time frame. RMR funds are used to finance CR and DM CR projects (i.e., they are used to fund the replacement of systems and components that are not LSI-eligible and have reached the end of their design life. RMR funds may not be used to finance FO, repair, RM, grounds keeping, or capital improvements.

Category I concession contract sections related to establishing and managing the RMR and the procedures for planning and managing projects financed by the RMR include:

- ◆ **Section 10(c) – Maintenance Reserve:** This Section describes the concessioner’s obligation to establish and maintain the RMR and defines the types of projects that may be financed by the RMR.
- ◆ **Section 14(c) 2 – Statements of Reserve Activity:** This Section defines the requirement for a concessioner to submit a financial statement describing RMR activity for the preceding

year.

- ◆ **Exhibit F – Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Project Procedures:** This Exhibit sets forth procedures for the administration of concessioner-funded new construction, major rehabilitations, and RMR projects.
- ◆ **Exhibit H – Maintenance Plan:** This Exhibit defines the requirements for maintenance planning and reporting of RMR funded projects.

Category II concession contract sections related to establishing and managing the RMR and the procedures for planning and managing projects financed by the RMR include:

- ◆ **Section 9(c) – Maintenance Reserve:** This Section describes the concessioner’s obligation to establish and maintain the RMR and defines the types of projects that may be financed by the RMR.
- ◆ **Section 13(c) 2 – Statements of Reserve Activity:** This Section defines the requirement for a concessioner to submit a financial statement describing RMR activity for the preceding year.
- ◆ **Exhibit E – Maintenance Plan:** This Exhibit defines the requirements for maintenance planning and reporting of RMR funded projects.
- ◆ **Exhibit E-1 – RMR Procedures:** This Exhibit sets forth procedures for project planning and management for RMR funded projects.

The concessioner must debit a contractually defined percentage of annual gross receipts to the RMR each month. This percentage is established during prospectus development. The percentage is based on the current and future CR needs of the facilities as determined by a CA. This percentage may also take into account specific, anticipated project needs.

Regulations require that the concessioner maintain an accounting record of its contributions to the RMR but do not that the concessioner maintain a corresponding liability account.

Concessioners must, with its accounting personnel or CPA make a determination on the methods of accounting for RMR contributions and expenditures in accordance with applicable accounting rules. Typically, schedule C of the AFR contains a current asset account the balance of which represents the total of the concessioner’s percentage contributions less any approved expenditures.

The concessioner must maintain all concession facilities to the satisfaction of the director and is responsible for all necessary CR, even if expenditures exceed available RMR funds. The director (or his or her representative) has the authority to direct the concessioner to expend RMR funds. A concessioner’s refusal to expend RMR funds when directed to do so may be considered a material breach of its concession contract. Refer to the concession contract to determine the status of any unexpended RMR funds remaining at the end of the contract term.

8.4.7 Monitor

Parks monitor the RMR to ensure:

- ◆ The concessioner is complying with the contract’s RMR requirements.
- ◆ Adequate funds are available for future projects.
- ◆ Expenditures match previously authorized project costs.

The concessioner must provide the park with a plan that provides a forecast of anticipated RMR projects. This plan must include a forecast, by year, of projects that will be financed by the RMR funds during the contract term. By using data from the CA conducted during prospectus

development, the park establishes minimum requirements for the concessioner's plan. The plan may be updated with new projects and maintenance requirements during the term of the concession contract. The concessioner may not expend RMR funds or begin RMR projects without written authorization from the superintendent.

Monthly, the park reviews RMR expenditures through concessioner provided invoices, labor records, and contracts. The park reviews the documentation and inspects the work to ensure that:

- ◆ RMR funds were expended on the approved project.
- ◆ Supporting project documentation complies with the agreed-upon project and funding.
- ◆ The completed work complies with the agreed-upon project scope and funding.

8.4.8 Annual Financial Reporting

The concessioner must report RMR activity on the AFR, which includes two schedules detailing RMR activity:

- ◆ Schedule P – Maintenance RMR annual reconciliation
- ◆ Schedule Q – Maintenance RMR expenditures

Annually, the park reviews the concessioner's AFR - specifically, Schedules P (RMR annual reconciliation) and Q (RMR expenditures) - to ensure that the AFR accurately reflects the year's RMR activities and balance. The park should resolve any discrepancies with the concessioner.

8.4.9 LSI Implications

The RMR may not be used to fund projects that would otherwise generate LSI or any other compensable interest. LSI-eligible events may include new construction, major rehabilitations, or fixture replacements. Parks must not authorize the funding of maintenance work by use of the RMR to mitigate or avoid LSI liability if that maintenance work would otherwise generate LSI.

8.4.10 Maintenance Plan

The maintenance plan is the blueprint for the management of concession facilities and it defines both the concessioner's and park's responsibilities. Through the maintenance plan the park defines the maintenance standards that concessioners must comply with. The superintendent is responsible for the review, and subsequent approval of the maintenance plan, and for monitoring the concessioner's compliance with the maintenance plan.

The maintenance plan must delineate what activities the park will undertake. Some parks choose to retain responsibility for certain maintenance activities. If activities are not specifically listed in the maintenance plan as the park's responsibility, then they are the responsibility of the concessioner.

The maintenance plan is separated into 5 sections:

- ◆ **Part A – General Standards:** Part A contains standard contract language that applies to all contracts, such as key terms and applicable laws.
- ◆ **Part B – Park Required Concessioner Responsibilities:** Part B contains park and operation specific maintenance requirements.
- ◆ **Part C – Concessioner Environmental Responsibilities:** Part C contains park and operation specific environmental requirements.
- ◆ **Part D – Concessioner Reporting Responsibilities:** Part D describes plans and reports that the concessioner is required to submit, and includes due dates for the submission of such plans and reports.
- ◆ **Work Order Supplement:** The Supplement contains a work order list of maintenance that the concessioner must complete in a one-year period.

During prospectus development, an initial maintenance plan is drafted. The park should review and update the maintenance plan annually. Requirements can change from one year to the next. For example, new maintenance deficiencies can arise, the concessioner's operations can change, and new buildings, systems or equipment can bring about new maintenance needs, etc.

Although concessioner approval of the maintenance plan is not required, the park is encouraged to obtain concessioner concurrence regarding any revisions to the maintenance plan.

8.4.11 Facility Management Software System

FMSS is the official repository for DOI federal real property and is maintained by PFMD. FMSS is an asset-based work identification, management and analysis system. FMSS allows parks, regions and WASO to track all aspects of work (such as planning and design, construction, operations/maintenance, and rehabilitation and removal) related to an asset. It also provides the initial data for conducting CAs.

Data for all assets must reside in FMSS. CA data collected during prospectus development is migrated to FMSS. Maintenance plans require concessioners to provide parks with work order information through plans, reports, and electronic files (refer to Part A of the maintenance plan). Parks are responsible for maintaining FMSS data integrity. Parks can accomplish this by manually updating FMSS with the concessioner provided plans and reports or through the use of the Concessions Work Order Transfer (CWOT) tool. The park is responsible for the review, approval and timely migration of the work information to FMSS in order to accurately reflect an asset's current condition.

(See Chapter 7 for additional information on the CWOT tool)

8.4.12 Annual Deferred Maintenance Reporting

At the end of every fiscal year DM is reported to the Federal Accounting Standards Advisory Board. The information is reported by park, region, and servicewide directly from FMSS. Timely updating of FMSS information will ensure that concession facilities DM is reported accurately.

8.4.13 Concessions Work Order Transfer Tool

The CWOT tool is an application that will allow for the exchange of work order information between parks and concessioners. This will allow parks to gain insight into the condition of concession facilities and maintain the integrity of FMSS data.

Concessioners with automated systems exchange data with parks via industry-standard “web-services” protocols. Concessioners without automated systems exchange data with parks through a template that is compatible with spreadsheets (e.g., Excel) and transmitted via email.

Parks review concessioner submitted work order information through the CWOT dashboard and approve or reject work orders on an individual basis. FMSS is updated with approved work orders. The park returns rejected work orders to the concessioner.

Parks can extract work orders from FMSS to build the concessioner’s initial work order file or at any time during the contract term.

8.4.14 Reporting

The concessioner must submit the following plans and reports to the park for review and approval on an annual basis. The park identifies due dates and inserts them into the maintenance plan.

8.4.14.1 Concessioner Maintenance Plan and Report

The Concessioner shall submit annually (for review and approval) a CMPR applicable to all concession facilities. Projected maintenance activities must be identified in the CMPR the year prior to commencement of the maintenance activities. Maintenance activities that require planning and/or design should be identified in the CMPR the year prior to the commencement of the planning and/or design. The purpose of the CMPR is to identify the need for and tentative scope of maintenance activities a complete year in advance of actual work to allow adequate time to prepare for work commencement. Projects shown in the CMPR must include, at a minimum, the:

- ◆ NPS asset number
- ◆ Work order number
- ◆ Work order subtype
- ◆ Work order open date
- ◆ Project title
- ◆ Concept description
- ◆ Justification
- ◆ Anticipated NEPA and Section 106 planning and compliance
- ◆ Status
- ◆ Work order completed date.

The CMPR should break down maintenance activities to be performed in sufficient detail to allow the NPS and the concessioner to identify, plan, locate and track work performed. The CMPR due date is stated in the maintenance plan.

8.4.14.2 Concessioner Project Plan and Report

The concessioner shall submit annually (for review and approval) a CPPR applicable to all concession facilities. Each projected new construction, major rehabilitation and RMR project must be identified in the CPPR the year prior to commencement of the individual project. Projects that require planning and/or design should be identified in the CPPR the year prior to commencement of the planning and/or design.

The purpose of the CPPR is to identify the need for and tentative scope of projects a year in advance of actual work to allow adequate time to prepare for project. Projects shown in the CPPR must include, at a minimum, the:

- ◆ NPS asset number
- ◆ Work order number
- ◆ Work order subtype
- ◆ Work order open date
- ◆ Project title
- ◆ Concept description
- ◆ Justification
- ◆ Anticipated NEPA and Section 106 planning and compliance
- ◆ Status
- ◆ Work order completed date.

The CPPR due date is stated in the maintenance plan.

8.4.15 Concessioner Funded Construction Projects

Parks are responsible for ensuring that concessioner funded construction projects adhere to law, policy, and the terms of the applicable concession contract throughout all phases of construction. Phases include project design, planning, and active construction. When park employees manage concessioner construction projects carefully, they help protect park assets and help safeguard the NPS's legal and financial interests. This document provides employees with guidance for managing projects and enforcing contract requirements.

Concessions personnel have a particularly direct effect on the stewardship of park assets when managing LSI. Concessioners that construct certain capital improvements may be entitled to LSI in such improvements. LSI creates a significant financial liability for the government.

Accordingly, employees must carefully consider the financial implications before making decisions about concessioner construction projects.

(See Chapter 9 for additional LSI guidance)

8.4.15.1 Concession Facilities Improvement Program

Concession Facilities Improvement Program (CFIP) projects are contractually required improvement projects that a concessioner must complete within the timeframe defined in the concession contract. CFIP projects must be approved by the director, or by an NPS representative to whom the director has delegated the authority to approve CFIP projects, and work on CFIP projects cannot commence until a notice-to-proceed is issued to the concessioner.

CFIPs may include the following types of projects:

- ◆ Construction of a new structure or an addition to an existing structure.

- ◆ Major rehabilitation of an existing structure.
- ◆ RMR projects.

Concessioner contract sections that are particularly relevant to managing concessioner construction projects authorized by category I contracts are:

- ◆ **Section 9 - Construction or Installation of Real Property Improvements:** This Section defines (if required) the CFIP components.
- ◆ **Exhibit A – Leasehold Surrender Interest:** This Exhibit establishes terms and conditions applicable to construction of a capital improvement.
- ◆ **Exhibit F – Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Project Procedures:** This Exhibit establishes procedures for the administration of concessioner funded new construction, major rehabilitations, and RMR projects.

8.4.15.2 Compliance

Concessioner funded construction projects are subject to the same review, compliance and approval policies as park funded construction projects. Parks must guide projects through appropriate NEPA and NHPA compliance processes. This should occur during prospectus development when defining the CFIP.

8.4.15.3 Development Advisory Board Review

All proposed concessioner funded constructions are subject to DAB policies and require DAB approval. Parks should refer to the latest [DAB policy](#). Project thresholds determine whether a project requires service-wide or regional DAB approval. The servicewide and regional DAB approvals follow the same process. Final approval of concessioner funded construction projects requires director or regional director approval depending on the project type and estimates.

Parks should consult their regionally-based technical experts as early in the process as possible if a project may require DAB review. The regionally-based technical experts can provide an estimate for how much time the concessions personnel should allot for the DAB review.

This DAB review process validates project decisions by ensuring that projects support the park mission, purpose and significance statements, and sustainability practices, and ensuring that project decisions are documented and tracked.

The regional DAB reviews proposed projects and makes recommendations to the regional director. The servicewide DAB reviews proposed projects and makes recommendations to the director. In the case of CFIP projects, review takes place prior to the prospectus being published.

The park must obtain DAB conceptual design approval prior to advertising a CFIP in a prospectus. Class C estimates are required for conceptual design approval. See Table 4 for construction estimate class definitions. The park (on behalf of the concessioner) obtains additional DAB approvals prior to allowing the concessioner to commence construction.

Table 8-3: Construction Estimate Class Definitions

	Conceptual (Class C) Construction Cost	Budgetary (Class B) Construction Cost Estimates	Actual (Class A) Construction Cost Estimates
Definition of Estimate	<p>The design and construction industry refers to Class C estimates as <i>conceptual</i> or <i>order-of-magnitude</i> estimates. They are generally used for:</p> <ul style="list-style-type: none"> • Feasibility studies • Development of project scope and program • Selection from among alternative designs <p>A Class C estimate is a conceptual cost estimate based on square foot cost of similar construction. These estimates are generally prepared without a fully defined scope of work (SOW). Support information should include:</p> <ul style="list-style-type: none"> ▪ Anticipated square footage and building type ▪ Anticipated site development, including existing and proposed utilities ▪ Anticipated mechanical and electrical needs (often based on square footage of building or anticipated power load) ▪ Anticipated structural systems ▪ Anticipated site utility requirements and utility systems 	<p>The design and construction industry refers to Class B Estimates as <i>budgetary</i> estimates. They are generally used for:</p> <ul style="list-style-type: none"> ▪ Budgeting or construction forecasting ▪ Authorization for full or partial funding <p>A Class B estimate is a combination of lump sum (conceptual costs) and unit costs. Typically, project designs have been developed far enough to define major systems (i.e., roof type, HVAC system type, etc.) of the project. Support information shall include:</p> <ul style="list-style-type: none"> ▪ Site Design (existing and proposed utilities, grading, planting, etc.) ▪ Building Design (plans, elevations and typical wall sections showing structural systems, proposed room finish or function). ▪ Schematic Mechanical and Electrical Systems Design (may be in the form of written analysis, based upon available information). ▪ Outline Specifications - including cut sheets of proposed equipment, fixtures or specialty items, which may significantly influence estimate. ▪ Initial Quantity Take-offs for utilities, site, and building systems (civil, landscape, and architectural). 	<p>The design and construction industry refers to Class A estimates as <i>detailed</i>, <i>definitive</i>, or <i>construction</i> estimates. The typical purpose of this type of estimate is:</p> <ul style="list-style-type: none"> ▪ Authorization of full funds ▪ Conducting a cost check of an authorized project ▪ Presentation of a contract price proposal ▪ To compare with a Contractor's price proposals for negotiations/construction award ▪ To use as the control budget for construction. <p>The NPS uses Class A estimates at the end of the design process, when the project is ready to be advertised for construction contract. It is often referred to as the Official Government Estimate.</p> <p>This estimate is based on a complete quantity take-off from completed construction drawings and specifications. Support information shall include:</p> <ul style="list-style-type: none"> ▪ Final Construction drawings and specifications. ▪ Estimate based on complete quantity takeoffs. ▪ Final Contract Price Schedule. ▪ Contractors overhead and profit as well as general conditions shall be shown as a separate cost item on the estimate.
Estimate Accuracy	<p>The accepted industry accuracy range of Class C estimates is – 30% to +50 %.</p> <p>Therefore a \$1,000,000.00 Class C estimate figure actually has a range of \$700,000.00 to 1,500,000.00.</p> <p>Typical Design (Estimating) Contingency used for Class C estimate is 15 to 30%.</p>	<p>The accepted industry accuracy range of Class B estimates is – 5% to +30 %.</p> <p>Therefore a \$1,000,000.00 Class B estimate figure actually represents a range of 850,000.00 to \$1,300,000.00.</p>	<p>The accepted industry accuracy range of Class A estimates is –5% to +15 %.</p> <p>Therefore a \$1,000,000.00 Class A estimate figure represents a range of \$950,000.00 to 1,150,000.00.</p>

(Source: http://workflow.den.nps.gov/staging/10_PublicForms/CostEstimatingHandbook_11-12-07.pdf)

8.4.15.4 Approvals

The delegation of authority for the approval of concessioner funded construction projects is determined according to the cost threshold of the project and whether the approval relates to

new construction, a major rehabilitation, or cost variance to an existing project. No construction can proceed until all approvals are granted. The thresholds for delegation of approval authority are defined below.

8.4.15.5 New Construction Projects

Only the director may approve concessioner funded construction of new structures, regardless of cost.

8.4.15.6 Major Rehabilitation Projects

Only the director may approve concessioner funded major rehabilitation projects of \$1 million or more. A regional director may approve concessioner funded major rehabilitation projects of less than \$1 million, with no further delegation authorized.

8.4.15.7 Cost Variances

Only the director may approve:

- ◆ Cost variances of 10 percent or greater of the total approved cost for the construction of a new structure.
- ◆ Cost variances of 10 percent or greater of the total approved cost for a major rehabilitation of an existing structure costing \$1 million or more, and
- ◆ Cost variances that move a major rehabilitation from less than \$1 million to greater than \$1 million.

A regional director may approve cost variances of 10 percent or greater for major rehabilitations costing less than \$1 million, with no further delegation authorized.

8.4.15.8 Project Management

The level of park supervision for concessioner construction projects may vary depending on the:

- ◆ Size of the park (and its level of staffing)
- ◆ Size and experience of the concessioner
- ◆ Size or complexity of the project.

Parks that do not have employees with the expertise required to manage projects should request the assistance of regionally-based technical experts.

8.4.15.9 Construction Project Plans and Reports

All CFIP and RMR projects should be included in the CPPR.

(See the sections on RMR and Concession Facilities Improvement Program in this chapter for additional report details)

8.5 Contract Transition and Asset Management

Contract transitions may occur during the course of a concession contract or at the end of a concession contract. Contract transitions during the course of a concession contract may occur due to early contract termination or sale/transfer of the business.

Parks must clearly define expectations when a contract transition involves an incumbent concessioner. Incumbent concessioners must understand that they will be held to the requirements outlined in the new contract and not to any precedent set during the previous

contract. Incumbent concessioners may not be aware of the asset management-related differences between a 1965 Act contract and a 1998 Act contract.

A new concessioner who has never held a contract with the NPS may not completely understand asset management requirements under a concession contract and may need guidance and explanation.

The park should hold a conference with the concessioner prior to the commencement of the new contract to discuss asset management requirements and set expectations.

Park responsibilities related to concession facilities management during contract close-out are:

- ◆ Collect final work order data from the concessioner.
- ◆ Update FMSS.
- ◆ Prepare final reconciliation of the RMR (if required by the contract).
- ◆ Collect final FRR.

Chapter 9: Leasehold Surrender Interest Management

9.2 Introduction

Title IV of P.L. 105-391 (The NPS Concessions Management Act of 1998, or the “1998 Act” establishes LSI as part of NPS concession contracts. This chapter describes the procedures established by the NPS to manage this LSI.

LSI is a right to payment for qualified improvements (LSI Improvements) that a concessioner makes or provides under the terms of a concession contract. LSI does not include any interest in the land on which the capital improvements are located. The United States retains legal ownership of all LSI Improvements.

A concessioner that constructs a capital improvement within a unit of the NPS accrues LSI in that capital improvement subject to the terms and conditions of the concession contract.

Upon expiration or termination of a concession contract, a concessioner that has accrued LSI is entitled to receive compensation for that LSI from either the United States or a successor concessioner. If a successor concessioner provides the compensation for the LSI value, the successor concessioner enters the new concession contract with LSI. The initial value of the LSI is equal to the amount of money the new concessioner paid to the prior concessioner for its LSI under the terms of the prior concession contract; such LSI is listed in exhibit G of the new contract.

9.2.1 LSI Improvements

LSI improvements are real property improvements in which LSI is recognized under an LSI contract. Under the terms of a contract that includes an opportunity to obtain LSI, a concessioner is eligible to obtain LSI only with respect to LSI improvements.

To qualify as an LSI improvement, the improvement must be constructed by the concessioner with concessioner funds (excluding RMR funds), constructed within the boundaries of a park on land owned by the United States, and approved and constructed in strict accordance with the terms of the applicable LSI contract.

A real property improvement may qualify as an LSI improvement if the improvement is the construction of a new structure, or a completely new addition to an existing structure, e.g., a new wing, a major rehabilitation, or the installation or replacement of a fixture or non-removable equipment.

9.2.1.1 Construction of a New Structure

A “structure” for LSI purposes is a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power, and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, and 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 the structure. Landscaping that is integral to the construction of a structure is considered part of that structure.

Personal property of any nature, including interior furnishings, is not considered part of a structure.

The replacement of a component of an existing structure (e.g., a roof replacement on an existing building) does not constitute the construction of a structure. The replacement of a component of a structure is classified as CR. A complete, new structure must be constructed for a concessioner to obtain LSI. Construction of a new addition to an existing structure (e.g., a new wing) is considered construction of a new structure.

9.2.1.2 Major Rehabilitation

A “major rehabilitation” for LSI purposes is a planned, comprehensive rehabilitation of an existing structure. Major rehabilitations must be approved by the NPS in advance and completed no later than 18 months after the start of the rehabilitation work (unless the concession contract states otherwise, or is amended to include a longer construction period). Construction costs must exceed 50 percent of the pre-rehabilitation value of the structure to qualify as a major rehabilitation. The pre-rehabilitation value of an existing structure is equal to its replacement cost less depreciation. The pre-rehabilitation value is determined through a CA conducted during prospectus development. The park should consult with the regional concessions office to obtain the pre-rehabilitation value of the structure prior to project approval.

9.2.1.3 Fixtures and Non-Removable Equipment

A “fixture” for LSI purposes (the term also refers to non-removable equipment) is a manufactured item of personal property of independent form and utility that is:

- ◆ Necessary for the basic functionality of a structure.
- ◆ Affixed to and considered part of that structure such that legal title to the fixture is held by the NPS as part of the real property after installation.

The definition of the term “fixture” for LSI purposes differs significantly from the definition of the term “fixture” that are commonly used in the hospitality, construction and real estate industries.

- ◆ An object must meet all requirements of the definition to qualify as a fixture.
- ◆ Fixtures do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, or paint).
- ◆ Floating docks (but not other types of floating property) are non-removable equipment (fixtures) for LSI purposes.

Parks should consult the “Fixture or Non-Removable Equipment Status List” located on the Program’s SharePoint [site](#), their regional office, or WASO to determine if the replacement item qualifies as a fixture. Park superintendents approve fixture replacements regardless of cost, prior to replacement of the fixture.

9.2.2 Why Track LSI Value?

Tracking LSI provides the NPS with the information necessary to project the amount of compensation that will be due to the concessioner at the end of the contract term, to determine whether a contract can financially support new construction that will result in additional LSI, and to estimate the funds needed to acquire LSI if circumstances so warrant. Tracking LSI also provides the LSI value to be included in the next concession contract.

LSI should be allocated and tracked on a unit-by-unit basis (individual structures). Throughout

the life cycle of a concession contract, activities take place that result in changes to an individual structure, and these activities may result in increases or decreases to the individual structure's LSI value. A concession contract's total LSI value is the sum of all structures' individual LSI values.

9.3 LSI Value Formulas

The formula for valuing LSI is set forth in the 1998 Act; however, the 1998 Act permits the use of a depreciating or alternative formula for valuing LSI in certain circumstances. Refer to the specific concession contract to identify the appropriate LSI valuation methodology. Each capital improvement is tracked and valued separately, and then totaled to arrive at a total LSI value for the contract.

9.3.1 Standard Formula

The value of LSI is:

- ◆ An amount equal to the Initial construction cost of the capital improvement.
- ◆ Adjusted by (increased or decreased) the same percentage increase or decrease in the CPI from the date the director approves the substantial completion (is ready to be put into service) of the construction to the date of payment of the LSI value.
- ◆ Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable LSI contract, or the date the concessioner ceases to utilize the related capital improvement. WASO IDIQ CA contractors using the WASO CA Scope of Services provide depreciation estimates for LSI eligible improvements.

9.3.2 Alternative Formulas

Alternative formulas for calculating LSI values may be used in a concession contract when a concession contract will have a LSI value of greater than \$10 million. There is no CPI adjustment under an alternative formula. P.L. 105-391, Section 405(a)(4), provides for two acceptable alternative formulas for calculating LSI value:

- ◆ Under formula A, the LSI value of a capital improvement is based on 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 the applicable federal income tax laws and regulations in effect on November 12, 1998.
- ◆ Formula B is any alternative formula that is consistent with the objectives of the National Parks Omnibus Management Act of 1998. An alternative formula may be used only if the Secretary of the Interior determines an alternative formula is necessary to provide a fair return to the government and to foster competition for the new contract by providing a reasonable opportunity to make a profit under the new contract.

9.3.3 Fixture Value Formulas

The formula for determining additional LSI value for fixture replacements depends on whether the structure where the fixture is already installed is an LSI Improvement.

9.3.4 New Fixture

When a concessioner constructs or installs a fixture in a structure that is not an LSI improvement, that fixture is a new fixture. The LSI value of a new fixture is the total construction cost of the fixture. The total construction cost of the fixture is tracked as a new LSI improvement.

9.3.5 Fixture Replacement

When a concessioner replaces a fixture in a structure that is an LSI improvement, that fixture is a fixture replacement. The construction cost of the replaced fixture is deducted from the LSI value of the LSI improvement, and the construction cost of the new fixture is added to the LSI value of the LSI improvement.

9.4 Construction of Capital Improvements

Exhibits A and F of category I concession contracts establish a number of requirements regarding the construction of LSI improvements. If a concessioner undertakes construction that would otherwise be eligible for LSI in violation of the requirements of a concession contract, the construction does not qualify as an LSI improvement and the concessioner does not obtain any LSI in connection with that construction. LSI improvements (new construction and major rehabilitation) are normally identified during prospectus development, approved as part of the prospectus process, and incorporated into the Concession Facilities Improvement Program (CFIP) included in a contract. LSI improvements (new construction and major rehabilitations) are rarely approved outside the prospectus process. An amendment to the concession contract is required to memorialize the approval of any additional LSI improvements that are not already reflected in the concession contract.

(See Chapter 8 for additional information and guidance on construction applicable to major rehabilitations and new construction)

9.5 LSI Additions during Contract Term

LSI additions during the concession contract term can only occur as the result of the construction of a capital improvement.

9.5.1 New Construction or Major Rehabilitations

After substantial completion of the project, in addition to the documents required pursuant to exhibit F of category I concession contracts, the concessioner must submit to the park the CPA certification. The certification must verify that all costs submitted for LSI approval were capitalized according to generally accepted accounting principles (GAAP) and are eligible direct or indirect costs as identified in exhibit A of the concession contract.

The superintendent (through the region) must submit the project documentation including the CPA certification to the WASO Program, Asset Management Branch for review of the eligible LSI costs.

WASO will review the project package, and estimate the eligible LSI costs, and provide the eligible LSI costs to the superintendent (through the region).

The park and the concessioner should review the eligible LSI costs, and either agree on the

eligible LSI costs or identify any discrepancies in the eligible LSI costs. The park should contact WASO to resolve any discrepancies.

Once the NPS and the concessioner agree on the eligible LSI costs, the park superintendent issues a project close-out letter to the concessioner, specifying the amount of additional LSI granted as a result of the project.

CPI and depreciation tracking for new LSI improvements begin on the date of substantial completion.

9.5.2 Fixture Replacement Reports

Superintendents are responsible for requiring concessioners with category I concession contracts to submit a FRR on an annual basis. This will help ensure that decisions for additional LSI as the result of fixture replacements are consistent and the NPS possesses the information that it needs to assist with end of contract LSI negotiations. This applies only to category I concession contracts.

Each year in January, WASO (through the region) sends an email with instructions and a blank FRR to parks. The park provides the concessioner with a copy of the FRR.

The concessioner returns the report with backup documentation (such as invoices and receipts) and CPA certification verifying that all costs submitted for LSI approval were capitalized according to GAAP.

The park reviews the FRR and supporting documentation for completeness before submitting the FRR, back up documentation, and CPA certification to WASO. WASO reviews the documentation, verifies that replacements are valid fixture replacements and determines the amount of additional LSI due to the concessioner. The total LSI adjustment for fixture replacements is documented on the FFR and returned to the superintendent (through the region).

The park and the concessioner should review FFR and either agree on the additional LSI or identify any discrepancies in the FFR. The park should contact WASO to resolve any discrepancies.

9.6 LSI Value Estimates

Concession contracts contain provisions under which the director and the concessioner will seek to agree in advance of concession contract expiration or other termination of the concession contract as to what the concessioner's LSI value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. The methodology used to estimate the ending LSI value is dependent on the:

- ◆ LSI formula stated in the concession contract.
- ◆ Purpose for which the LSI value estimate will be used.

WASO provides ending LSI value estimates. There are three instances in which the NPS must assess the value of LSI:

1. When the NPS is providing an estimate of LSI value to be included in the prospectus for a new concession contract.
2. When the NPS is negotiating LSI value.
3. When LSI value is the subject of arbitration between the NPS and a concessioner.

The formula for estimating the ending LSI value for a specific contract is defined in each concession contract.

9.6.1 LSI Estimates for Prospectus and Negotiation Purposes

Regional directors or deputy regional directors must approve all LSI value estimates of less than \$1 million to be included in a prospectus for a new concession contract. For LSI value estimates equal to or greater than \$1 million to be included in a prospectus for a new concession contract, regional directors must obtain the concurrence of the director, deputy director of operations, or associate director of business services.

9.7 LSI Negotiations

Most concession contracts allow the NPS to negotiate LSI value at any time. Agreements between the NPS and a concessioner to negotiate LSI value must be non-binding unless otherwise approved by the director. Such agreements must also provide for the allocation of LSI on a structure-by-structure basis when multiple structures are involved.

Regional directors, with concurrence of the WASO program chief, may approve all initial NPS LSI value negotiating positions under \$1 million. For all initial NPS LSI value negotiating positions equal to or greater than \$1 million, regional directors must obtain the concurrence of the director, deputy director of operations, or associate director of business services.

Regional directors designate the negotiating team for concession contracts with estimated LSI values of less than \$1 million. For all negotiating teams for concession contracts with an estimated LSI value equal to or greater than \$1 million, regional directors must obtain the concurrence of the director, deputy director of operations, or associate director of business services.

Regional directors, with concurrence of the WASO program chief, may approve any proposed LSI value agreement between the NPS and a concessioner with an estimated value less than \$1 million. For any proposed LSI value agreement between the NPS and a concessioner with an estimated value equal to or greater than \$1 million, regional directors must obtain the concurrence of the director, deputy director of operations, or associate director of business services.

9.7.1 Proposed LSI Negotiation Value

Any proposed LSI value agreement between the NPS and a concessioner must be justified in writing. The LSI value must be provided on a structure-by-structure basis when multiple structures are involved. The written justification of the proposed LSI value agreement must contain the following information:

- ◆ Background information on the existing concession operation, including the scope of

required and authorized visitor services, annual gross receipts, a description of LSI improvements, and a summary of the concession contract's applicable LSI provisions.

- ◆ A summary of the concessioner's position during the negotiations.
- ◆ A summary of the LSI valuation methodology used.
- ◆ The NPS initial LSI value position.
- ◆ A discussion of any perceived differences between the initial NPS LSI value position and the concessioner's LSI value position on these items and other points of contention in negotiations.
- ◆ A discussion of information, gained in negotiations, which influenced any adjustment to the initial NPS value position.
- ◆ The proposed agreed-upon LSI value.
- ◆ A justification of the proposed agreed-upon LSI value including but not limited to a discussion of potential arbitration costs and an arbitration risk analysis.
- ◆ A statement, signed by the appropriate regional director or deputy regional director, articulating that agreeing to the proposed LSI value is in the best interests of the United States.
- ◆ A draft LSI value amendment to the concession contract between the NPS and the concessioner.

9.8 LSI Arbitrations

The director or concessioner can request arbitration concerning LSI value if LSI value negotiations fail. The NPS will not agree to arbitration in other circumstances except with the express approval of the director.

The arbitration is to be conducted in accordance with applicable requirements of 36 CFR Part 51 and the terms of the related concession contract.

The NPS will negotiate an arbitration procedure agreement with the concessioner to describe in detail the timeline and procedures to be followed in the arbitration.

9.8.1 LSI Arbitration Approvals

Before the NPS enters into any arbitration procedure agreement concerning the arbitration of LSI value, a regional director or deputy regional director must, with the concurrence of the WASO program chief and the Office of the Solicitor, approve such arbitration procedure agreement. Regional director or deputy regional director approval of any arbitration procedure agreement concerning the arbitration of LSI value is subject to the final approval of the director, deputy director of operations, or associate director of business services.

Before the NPS submits an initial NPS LSI value position in the arbitration of LSI value, a regional director or deputy regional director must, with the concurrence of the WASO program chief and the Office of the Solicitor, the submission of such initial NPS LSI value position. Regional director or deputy regional director approval of the submission of any initial NPS LSI value position in the arbitration of LSI value is subject to the final approval of the director, deputy director of operations, or associate director of business services.

9.9 LSI Waivers

Concessioners may request NPS approval to carry out an LSI-eligible project and waive the LSI.

This is especially likely to happen with projects that will result in additional revenue for the concessioner (i.e., projects from which the concessioner will benefit financially even without being compensated for LSI). The NPS cannot require a concessioner to construct a capital improvement and waive LSI, but if the concessioner proposes to do so, the concession specialist can initiate this process by contacting the regional office.

9.10 LSI Compensation

LSI compensation can occur at any time, but most often occurs towards the end of the concession contract term.

9.10.1 Partial or Full Compensation for LSI Value

If the NPS compensates the concessioner for the full LSI value under a concession contract, any new concession contract involving the same assets that were covered by the previous concession contract will have an initial LSI value of zero. If the NPS compensates the concessioner for part of the LSI value under a concession contract, the initial LSI value for a new contract will be decreased by the amount the NPS has paid to the concessioner. The NPS may provide partial LSI compensation to:

- ◆ Make the new contract more financially feasible.
- ◆ Increase the likelihood of a more competitive prospectus process.
- ◆ Improve the park's financial situation for the term of the new contract.

If in connection with entering into a new concession contract, a successor concessioner provides compensation for LSI value to the prior concessioner, the successor concessioner has LSI under the new concession contract. The initial value of the successor concessioner's LSI under the new concession contract is equal to the amount the successor concessioner paid to the prior concessioner for its LSI under the terms of the prior concessions contract; such LSI is listed in exhibit G of the new concession contract. The amount of money the successor concessioner paid to the prior concessioner for its LSI, may be the full amount owed to the prior concessioner for its LSI, or if the NPS paid the prior concessioner part of the amount owed to the prior concessioner for its LSI decreased by the amount paid by the NPS.

9.10.2 Prior LSI Contract to a New LSI Contract

The LSI value of any LSI improvement existing under a prior LSI contract may be carried over to a new LSI contract. If there is more than one LSI improvement, each LSI improvement will have its own carryover LSI value.

9.10.3 Prior PI Contract to an LSI Contract

PI improvements under a PI concession contract become LSI improvements if they are carried over into a new LSI contract. The value of the PI improvements is converted to LSI value and listed as the initial LSI value in the new LSI contract.

Subchapter 9S: Possessory Interest Management

9S.1 Introduction

Prior to Public Law 105-391 – National Parks Service Concessions Management Act (National Parks Omnibus Management Act of 1998 or the “1998 Act”), Concession Contracts were issued under the provisions of Public Law 89-249, often referred to as the “1965 Act.” The 1965 Act provided concessioners with a compensable interest for eligible, NPS-approved, concessioner-funded improvements. As such, PI represents a potential financial liability to the government.

There are two types of PI improvements: concessioner improvements and government improvements. Concessioner improvements are improvements that a concessioner constructed or purchased from a prior concessioner. Government improvements are improvements assigned to the concessioner that the government constructed or purchased from a concessioner.

9S.2 PI Improvement Valuation

PI value is determined at a contract’s expiration and is based on the type of improvement (i.e., a concessioner improvement or a government improvement). Unless the Concession Contract states otherwise, improvements are valued as follows:

Concessioner improvement estimates are valued based on ‘sound value’ (reconstruction cost less physical depreciation evidenced by condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value).

Government improvement estimates are valued at ‘book value’ (unrecovered cost as shown in Federal income tax return).

Parks should refer to the specific contract to confirm the appropriate PI valuation methodology to be used.

9S.3 PI Value Estimates

There are three instances when the NPS must assess the value of PI: (1) providing an estimate of PI value to be included in the prospectus for a new concession contract, (2) negotiating PI value with an incumbent concessioner, and (3) arbitrating the value of PI.

9S.3.1 PI Estimates for Prospectuses and Negotiation Purposes

The NPS’s estimate of sound value PI compensation for inclusion in a prospectus or negotiation purposes is based on the lower of the reproduction cost (less depreciation) or the replacement cost (less depreciation) of the related improvements. These figures are derived from a condition assessment of the related improvements conducted by a WASO Commercial Services IDIQ condition assessment contractor using the WASO Commercial Services Condition Assessment (CA) Scope of Services (see 7.4 Condition Assessment for further CA guidance). If the NPS believes the PI fair market value is less than reproduction or replacement cost, WASO, region and the park will decide if an appraisal should be obtained.

9S.3.2 PI Estimates for Arbitration Purposes

The NPS’s estimate of sound value PI compensation for arbitration proceedings must be based on a DOI Office of Valuation Services (OVS) approved appraisal. This estimate will serve as the initial NPS PI value position in the arbitration. A CA must be completed prior to requesting OVS to obtain an appraisal.

WASO Commercial Services, Asset Management Branch serves as the point of contact for obtaining PI estimates for arbitration purposes and OVS appraisal review and approval.

9S.3.3 PI Value Estimate Approvals

PI value estimates of less than \$1 million must be approved by a Regional Director or Deputy Regional Director, with no further delegation authorized. Regional Directors or Deputy Regional Directors must obtain the concurrence of the Director, Deputy Director, Operations, or Associate Director, Business Services, for PI values estimates of \$1 million or greater.

9S.4 PI Negotiations

The NPS may negotiate the value of PI in two circumstances: (1) prior to contract expiration and (2) after a new contract is awarded to an incumbent concessioner. The NPS may not require an incumbent concessioner to agree to a negotiation of PI value during the term of the contract except at the concessioner's request.

Agreements to negotiate must be non-binding unless otherwise approved by the Director. If an incumbent concessioner is awarded a new concession contract, NPS may negotiate the PI value with the concessioner in an effort to avoid arbitration.

Any information exchanged by the NPS and the concessioner during the course of a negotiation is confidential and may not be used by either party in any subsequent proceeding regarding the value of the concessioner's PI in the event that negotiations are unsuccessful. The confidentiality agreement must be in writing and signed by both the NPS and the concessioner prior to the commencement of negotiations. The draft confidentiality agreement must be reviewed by the appropriate Office of the Solicitor before either party signs it.

9S.4.1 Proposed PI Negotiation Value

Any proposed PI value agreement between the NPS and the concessioner must be justified in writing. The PI value must be provided on a structure-by-structure basis when multiple structures are involved. The written justification of the proposed agreed-upon PI value must contain the following information:

- Background information on the existing concession operation including but not limited to the scope of required and authorized visitor services, annual gross receipts, a description of PI improvements, and a summary of the contract's applicable PI provisions.
- A summary of the concessioner's position during the negotiations.
- A summary of the valuation methodology used.
- The NPS initial PI value position.
- A discussion of any perceived differences between the initial NPS value position and the concessioner's position on these items and other points of contention in negotiations.
- A discussion of information, gained in negotiations, which influenced any adjustment to the initial NPS value position.
- The proposed agreed-upon PI value.
- A justification of the proposed value including but not limited to a discussion of potential arbitration costs and an arbitration risk analysis.
- A statement, signed by the appropriate Regional Director or Deputy Regional Director, to the effect that he/she considers that agreeing to the proposed PI value is in the best interests of the United States.
- The final, written PI value agreement between the NPS and the concessioner. If the agreement concerns PI under the terms of an existing NPS Concession Contract, the written agreement must be in the form of an amendment to the applicable Concession Contract or a bilateral agreement attached to the contract.

9S.4.2 PI Negotiation Approvals

Regional Directors or Deputy Regional Directors designate the negotiating team for Concession Contracts with PI values estimated at less than \$1 million. Regional Directors or Deputy Regional Directors must obtain the concurrence of the WASO Commercial Services Program Chief for all negotiating teams for concession contracts with an estimated PI value equal to or greater than \$1 million.

Initial NPS PI value negotiating positions less than \$1 million may be approved by a Regional Director or Deputy Regional Director with the concurrence of the WASO Commercial Services Program Chief. Initial NPS PI value negotiating positions equal to or greater than \$1 million may be approved by a Regional Director or Deputy Regional Director only with the concurrence of the Director; Deputy Director, Operations; or Associate Director, Business Services.

Regional Directors or Deputy Regional Directors, with concurrence of the WASO Commercial Services Program Chief, may approve Proposed PI value agreements between the NPS and a concessioner with an estimated value less than \$1 million. Any proposed PI value agreements between the NPS and a concessioner with an estimated value equal to or greater than \$1 million may be approved by a Regional Director or Deputy Regional Director only with the concurrence of the Director; Deputy Director, Operations; or Associate Director, Business Services.

9S.5 PI Arbitrations

PI value arbitration is required if negotiations fail. The NPS will not agree to arbitration in other circumstances except with the express approval of the Director.

The arbitration is to be conducted in accordance with the terms of the related Concession Contract and the terms of an arbitration procedure agreement with the concessioner. An arbitration procedure agreement will be negotiated with the concessioner to describe in detail the timeline and procedures to be followed in the arbitration.

9S.5.1 PI Arbitration Approvals

Regional Directors or Deputy Regional Directors, with the concurrence of the WASO Commercial Services Program Chief and the Office of the Solicitor, must approve all arbitration procedure agreements for arbitration of PI value, subject to the final approval of the Director; Deputy Director, Operations; or Associate Director, Business Services.

Prior to its submission in the arbitration process, Regional Directors or Deputy Regional Directors, with the concurrence of the WASO Commercial Services Program Chief and the Office of the Solicitor, must approve initial NPS value positions for arbitration of PI value, subject to the final approval of the Director; Deputy Director, Operations; or Associate Director, Business Services.

Chapter 10: Financial Management

10.1 Introduction

Financial management procedures for concession contracts are necessary within the CS Program to ensure that the government receives appropriate return from concessioners for these contracts, that concessioner fiscal management is reviewed to ensure these returns as well as to help ensure the provision of safe, environmentally responsible and quality services and management of assigned facilities, and that the NPS effectively and appropriately uses the fees received from these concession contracts. This chapter describes these financial management procedures in two primary functional categories: franchise fees and financial reporting.

10.2 Franchise Fees

Franchise fees are monetary return to the NPS in return for the granting of certain rights and privileges to a concessioner in a contract with the government. This section outlines how these fees are determined, received, tracked and expended.

10.2.1 Establishing Franchise Fees

Setting the minimum rate of return to the government in the form of a franchise fee is accomplished through a well-defined, systematic process managed by the NPS.

10.2.1.1 Franchise Fee Authorities

Section 407 (a) of the 1998 Act states a “concession contract shall provide payment to the government of a franchise fee or other such monetary consideration as determined by the secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based on a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.”

A Federal Register notice dated July 3, 2000, states that “until such time as NPS may adopt more specific new franchise fee determination guidelines reflecting the terms and conditions of Title IV of P.L. 105-391, NPS will establish minimum franchise fees for new concession contracts on a case by case basis in accordance with the terms of Section 407(a) of P.L. 105-391 and will include the proposed minimum franchise fee in concession contract prospectuses issued pursuant to 36 CFR part 51.”

10.2.1.2 Determining the Franchise Fees

In accordance with P.L. 105-391, to determine the probable value to the concessioner of the privileges granted by the contract and to set a minimum franchise fee, the NPS must conduct a review of the concessioner’s reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. In conducting that review, the NPS must consider the concessioner’s prospective revenue and expenses over the term or remainder of the contract and the level of investment, types of services, and risk inherent in the operation. The review shall assume that the concessioner will make reasonable business decisions and operate in a competitive environment. The franchise fee will be the difference between the expected profitability of the opportunity and a fair return.

The specific review of the concession opportunity and the weighing of the significant factors related to the determination of the expected profitability shall be made on a case by case basis with appropriate emphasis on the practices and constraints of businesses providing similar services.

To provide a comparison between the expected concessioner return and a reasonable return, the Program prepares a franchise fee analysis including pro forma income and cash flow statements that reflect the anticipated income and expenditures generated by the concession opportunity.

(See Chapter 4 for additional information regarding Franchise Fee Analysis)

10.2.1.3 Franchise Fees for Small Concessioners

For contracts that are projected to result in annual gross receipts between \$250,000 and \$500,000, and for category I and II contracts with either LSI, defined maintenance or property insurance requirements, regional offices should complete a franchise fee analysis to determine the franchise fee.

For contracts that are projected to result in annual gross receipts under \$250,000, reference the August 21, 2014 Guidance for Franchise Fees for Small Concession Contracts.

10.2.2 Franchise Fee Reconsideration and Waiver of Franchise Fees

This section includes background information on franchise fees, and discusses the procedures to follow in the event either the concessioner or the NPS concludes a change in the franchise fee is necessary.

10.2.2.1 Franchise Fee Reconsideration Criteria

P. L. 105-391 limits franchise fee reconsiderations to situations in which extraordinary and unanticipated changes from the conditions anticipated as of the effective date of the concession contract have occurred. If the concessioner or director concludes that extraordinary, unanticipated changes have occurred; either party may request a reconsideration and possible subsequent adjustment of the franchise fee.

Furthermore, regulations require that both the concessioner and the NPS agree, before franchise fee reconsideration negotiations can begin, that extraordinary, unanticipated changes occurred after the effective date of the contract that have had, or will have, a material effect on the probable value of the privileges granted by the contract. Binding arbitration may occur only with respect to the determination of the franchise fee and not with respect to the decision of either party as to whether the qualifying extraordinary, unanticipated changes have occurred.

For contracts issued pursuant to P. L. 105-391, the following criteria must be met for the franchise fee to change because of franchise fee reconsideration:

- ◆ The contract term must be greater than five years. The franchise fee contained in a contract with a term of five years or less may not be adjusted during the term of the contract.
- ◆ The NPS must agree that all changes to the operation:
 - Happened subsequent to the execution of the contract;
 - Were extraordinary in nature;
 - Were unanticipated as of the effective date of the concessions contract; and
 - Have had, or will have, a material effect on the probable overall value of the privileges

granted by the contract.

- ◆ The two parties must agree that the above changes have occurred before initiating negotiations on the amount of the new franchise fee. Binding arbitration may be initiated if the parties fail to agree on the new franchise fee.

For the purpose of franchise fee reconsideration, the phrase “extraordinary, unanticipated changes” refers to changes to the conditions that existed or would have been reasonably expected to exist at the effective date of the contract and have affected or will significantly affect the probable value of the privileges granted to the concessioner by its contract. The phrase “probable value” refers to the reasonable opportunity for net profit in relation to capital invested and the obligations of the contract.

Under a broad interpretation of the law and regulations, few occurrences would be unanticipated by a reasonable person. However, the linkage of “extraordinary” to “unanticipated” limits changes that can result in franchise fee reconsiderations to those changes of great magnitude that were not reasonably foreseeable when the terms of the contract were prepared and the concessioner submitted the successful offer. In determining whether a change is “unanticipated”, one should consider not only whether the change itself was anticipated, but also whether the elements of the change, such as the magnitude and duration, were anticipated. For instance, the closure of an entrance road into a park in an earthquake-prone area is likely to have been anticipated by the parties. However, one should consider the duration of the road closure, and one might determine that a lengthy closure reaches the “unanticipated” threshold.

Simple increases or decreases in anticipated profit do not constitute “extraordinary” changes. Fluctuations in revenue and profit are expected, and the parties must acknowledge and accept the inherent risk in any business enterprise. However, extreme reductions in cash flow can affect the way a business operates in ways that could adversely affect visitor safety, the continuation of quality services, and the maintenance of structures. Such extreme changes in circumstances, in which the government’s objectives behind its issuance of the contract can no longer be achieved, may qualify as “extraordinary.”

For the purpose of franchise fee reconsiderations pursuant to contracts entered into under the authority of P. L. 105-391, the terms “unanticipated” and “extraordinary” must be considered in their strictest and narrowest definitions, except that when determining whether a change qualifies as “unanticipated”, one must consider the magnitude and duration of the impact of the change on the concessioner.

In the case of an event that is averse to the concessioner’s interests, the NPS will agree to a franchise fee reduction only when the core interests of the federal government with respect to the health and safety of the visitor, the protection of concession facilities, and the provision of quality services are threatened by the franchise fee being set too high. A franchise fee reduction is not intended to make the concessioner profitable or “whole” either in a limited period of time or over the term of the contract, but rather to ensure that core government interests are maintained. If the change in question is severe but of a known, limited duration, and the NPS agrees to a franchise fee reduction, the NPS should consider the possibility of recovering any relief provided via a franchise fee reduction in later years of the contract.

If a positive financial change occurs that benefits a concessioner, such as the elimination of a non-revenue producing construction program, the NPS should seek to increase the concessioner’s franchise fee to a level that maintains the concessioner’s prior return.

10.2.2.2 Procedures for Franchise Fee Reconsideration

A franchise fee reconsideration must be requested within the time frame stated in the contract from the date the party or parties became aware, or should have become aware, of possible extraordinary, unanticipated changes that occurred after the effective date of the contract.

The NPS or the concessioner must make this request in writing and must include a description of any extraordinary, unanticipated changes and why it believes that these changes have affected or will significantly affect the probable value of the privileges granted by the contract.

Concessioner-initiated requests and accompanying correspondence should be forwarded to both the regional director and the WASO. After further study and consideration of the issues, and if the regional director agrees extraordinary and unanticipated changes have occurred, the regional director will make a written recommendation to the director on the merits of the request. If the director concurs with the regional director's recommendation, the decision and next steps regarding the franchise fee reconsideration will be transmitted to the concessioner. If there is no basis for reconsideration, the regional director may deny the request, in writing to the concessioner, after consulting with the WASO CS Office. The director will respond to any appeals of the regional director's decision made by the concessioner. If the parties do not agree that an extraordinary and unanticipated change has occurred, the matter ends and the franchise fee remains unchanged.

If both parties agree that the definition of extraordinary and unanticipated was met, the parties have 60 calendar days from the date of their agreement that the definition has been met to undertake good faith negotiations to determine an appropriate adjustment to the franchise fee. Refer to the applicable concession contract for negotiation procedures.

10.2.2.3 Negotiation Analysis for Franchise Fee Reconsideration

Prior to negotiations concerning franchise fee adjustments, WASO, in conjunction with the regional office, will determine the effect of an extraordinary, unanticipated change on the probable value of the contract by:

- ◆ Estimating the effect of the change on future capital expenditures, revenues, expenses, and net income to determine the probable value of the privileges granted by the contract for the remainder of the contract;
- ◆ Combining historical Annual Financial Report (AFR) information with estimated future projections of revenues, expenses, and net income to estimate the contract's total value; and
- ◆ Determining the appropriate franchise fee percentage for the remainder of the contract term. This percentage will be the basis for franchise fee reconsideration negotiations.

Options for adjusting the franchise fee may include:

- ◆ Increasing or decreasing the fee for some period of time shorter than the remaining term of the contract;
- ◆ Reducing the fee to zero for a period of time; and
- ◆ Staggering the fee based on gross receipt levels.

During this analysis, the NPS may ask the concessioner to provide additional information.

If negotiations result in an agreement to adjust the franchise fee within the period stated by the contract, the fee will be adjusted accordingly and prospectively as of the effective date of the contract amendment that memorializes the franchise fee adjustment. The director must approve any changes to the franchise fee and the accompanying amendment to the contract.

If negotiations do not result in agreement as to the adjustment of the franchise fee within the period stated by the contract, the concessioner or the director may request binding arbitration to determine the adjustment to the franchise fee, if any. Requests for arbitration must be made by mailing written notice to the other party within the time frame identified in the applicable concession contract.

10.2.2.4 Arbitration for Franchise Fee Reconsideration

Following the receipt of a written notice requesting binding arbitration within the time frame identified in the applicable concession contract, the concessioner and the director will each select an arbiter. The two arbiters, within the time frame identified in the contract, must agree on the selection of a third (neutral) arbiter to complete the arbitration panel. Unless the parties agree to alternate procedures, the arbitration panel will establish the arbitration procedures. Such procedures must provide each party a fair and equal opportunity to present its position to the arbitration panel.

The arbitration panel will consider the concessioner's and the director's written submissions along with their oral presentations, if any, and render a decision on a franchise fee adjustment that is consistent with the probable value of the privileges granted by the contract. Refer to the applicable concession contract for the time frame for rendering this decision.

- ◆ Franchise fee adjustments will be prospective only.
- ◆ Franchise fee adjustments will be documented in an amendment to the contract.
- ◆ During the time, the franchise fee reconsideration is pending; the Concessioner must continue to make the contractually established franchise fee payments.

10.2.2.5 Waiver of Franchise Fees

Concessioners are contractually obligated to remit franchise fee payments to the NPS, and failure to do so may be cause for contract termination. The director, regional director, or the superintendent may not waive the concessioner's obligation to pay franchise fees or to make other contractually required payments, or to provide the NPS with other contractually required consideration.

The director may waive a franchise fee in part pursuant to administrative guidelines that allow for a partial franchise fee waiver in recognition of the concessioner's exceptional performance. A concessioner will have no right to require the partial waiver of a franchise fee under this authority or under any related administrative guidelines. Administrative guidelines have not been developed for the partial waiver of franchise fees and any partial waiver must be approved by the associate director of business services.

10.2.3 Processing and Reconciling Franchise Fee Payments

The NPS has well established processes for accepting franchise fee payments from concessioners. This section describes some of the administrative procedures related to this collection.

10.2.3.1 Types of Payments

Concessioners remit franchise fee payments based on the terms of the contract. Franchise fee payments must be transmitted electronically. Procedural guidance for electronic payment options is available through the Program.

10.2.3.2 Notification and Verification of Deposit

WASO

The WASO Budget Office divides the franchise fee payments as follows: 80% of these funds are earmarked for the park while 20% are earmarked for an account held by WASO. WASO holds the 80% funds retained for use at the park in a central account and distributes funds monthly based on region and WASO approved spending plans that parks submit. The WASO Budget Office records 80% fund distributions on a master funds tracking sheet it maintains in cooperation with the WASO CS Office. This tracking sheet is posted on SharePoint for parks to track their franchise fee balances.

The procedures for monthly distributions are as follows:

- ◆ The WASO CS Office sends a monthly allocation request to the WASO Budget Office based on the approved park spending plans.
- ◆ The WASO Budget Office allocates the 80% funds to the regions via the FBMS.
- ◆ The WASO Budget Office prepares and distributes funding advices to track this activity and to notify regional offices of the allocations.

Region

The regional budget office and CS offices coordinate with parks to make funds available at the park level. Regional offices assist parks with funding discrepancies or errors.

Park

Park concession employees are responsible for verifying and reconciling all franchise fee payments. Park concession staff must ensure that all franchise fee payments are accurate and timely. The park concession staff should complete the following checks:

- ◆ Receive and retain confirmation of payment and monthly form.
- ◆ Confirm the concessioner correctly calculated the franchise fee.
- ◆ Confirm deposit in government accounting and financial reporting systems (i.e., FBMS or AFS4).
- ◆ Compare monthly funding advice to park records. If discrepancies exist, contact the regional office.
- ◆ Retain all necessary documentation to verify that all franchise fee payments were made accurately and in a timely manner.

Additionally, the park must ensure that all allocations from WASO and regional budget office's match the approved funding plans.

Procedural guidance for reconciling franchise fees is available through the Program.

10.2.4 Use of Franchise Fees

Title IV of P.L. 105-391 (October 13, 1998) provides for the use of concession franchise fees by the NPS. Section 407 states: "All franchise fees (and other monetary consideration) paid to the

United States pursuant to concessions contracts shall be deposited into a special account established in the Treasury of the United States. 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 National Park System regardless of the unit of the National Park System in which the funds were collected. The funds deposited into the special account shall remain available until expended." The remaining 80 percent is returned to the park from which it was generated.

10.2.4.1 Criteria for Use of the 20 Percent Franchise Fee Account

The Program manages the funds in the 20 percent franchise fee account (20 percent FF). The 20 percent FF funds are used to support prospectus development, PI/LSI buy-down, evaluating and enhancing concession operations, and developing environmental programs. It is also anticipated that some of these funds will be made available for concession-related needs at parks that cannot generate sufficient franchise fee funds. These funds may not be used for permanent staffing without the director's approval. Director approvals of the use of 20 percent FF funds to pay for permanent staffing have been granted under strict conditions and reporting requirements.

10.2.4.2 Procedures for 20 Percent Franchise Fee Funds

The Program will determine how to allocate 20 percent FF funds. The WASO program chief, with input from regional and branch chiefs, will annually evaluate a list of requests for park projects and regional office use. The program chief may propose additions as well. Once requests for 20 percent FF funds are approved, the Program notifies (via a transfer memo) the WASO Budget Office and regional budget offices to make the funds available.

Requests to use 20 percent FF funds for PI/LSI buy down will be evaluated against a set of strict criteria to ensure parks have diligently assessed other potential sources of funds.

Requests to use 20 percent FF funds for PI/LSI payments must be submitted through the regional director to the director for approval, and must include the results of a thorough analysis of the park's funding sources as outlined below. Requests should be sent to the attention of the chief of CS, who will analyze the request with the assistance of the Office of the Comptroller and make a recommendation for approval to the associate director of business services, comptroller, and deputy director. The use of national fund sources like 20 percent FF funds for the purposes of PI/LSI buy downs will only be approved to the extent necessary to achieve a viable contract (e. g., a contract with a minimum 1 percent franchise fee), with exceptions as noted in the Category I - Contract Proceeds section below. In the rare cases in which a concession contract is converted to a lease; 20 percent FF funds may not be used.

Funding PI/LSI to the extent necessary for the next concessioner to have a fair opportunity for a profit is a mandatory requirement and must be given the highest priority over another park needs. Parks must evaluate, in the order below, the availability of the following fund sources prior to requesting 20 percent FF funds. Partial funding can be identified from one or more sources.

Category I – Contract Proceeds

A financial analysis of the contract must be developed (using an estimate for the PI/LSI value if a negotiated value has not been determined). If the analysis shows the contract is viable (the

contract's franchise fee will be at least 1 percent), no further analysis is required and the park generally is not eligible for national funding sources. An exception to this general rule is when:

- ◆ Park management has responsibly set aside and save 80 Percent Franchise Fees (80 percent FF), and other funds, to pay toward the reduction of existing PI or LSI.
- ◆ The financial analysis demonstrates using additional 20 percent FF funds to buy down PI or LSI should eliminate all or nearly all the LSI over the term of the next contract because of higher franchise fees used to eliminate LSI during the next contract.

Under these circumstances, the park may request 20 percent FF to achieve these results. The Program is available to assist with this analysis.

Category II – Park's 80 Percent FF Funds

If, after completing the review in category I, the contract is not projected to be viable, a park must use its own franchise fees to buy down the PI/LSI. Mandatory PI/LSI obligations must be a park priority for use of franchise fees, and the park should reprioritize and postpone other projects as necessary. Parks with financially troubled contracts should be saving franchise fees for the purchase of PI/LSI and such efforts should be documented in their 3-year plans. Parks approved to fund permanent salaries from 80 percent FF funds may fund those expenses first. Parks that are unable to reprioritize or postpone projects to pay for PI/LSI must provide a thorough justification for why this cannot be done prior to requesting 20 percent FF funds. Parks with special accounts should use a similar evaluation process. It may be necessary to save special account funds until the expiration of the current contract to buy down PI/LSI. The exception to the general rule in category I - Contract Proceeds recognizes parks that have accomplished these requirements.

Category III – Franchise Fee Loan from other Parks within the Region

If, after analyzing categories I and II, the contract is still in need of funds, parks must work with their region to identify other parks that can loan franchise fees to the troubled contract. Loans must be paid back over the term of the new contract from funds generated by the contract. The exception to the general rule in category I - Contract Proceeds does not require this step unless the increase in franchise fees would provide sufficient funds to repay the loan and eliminate all or nearly all the LSI.

Category IV – Park's 80 Percent Recreation Fee Fund

If, after analyzing Categories I, II and III, the contract is still in need of funds, parks must make the purchase of PI/LSI a high priority for 80 percent recreation fees. Parks with financially troubled contracts should be saving their 80 percent recreation fees for the purchase of PI/LSI and should evaluate whether it is possible to reprioritize or postpone projects to pay for PI/LSI. Parks that are unable to make recreation fees available to pay for PI/LSI must provide a thorough justification for why this cannot be done prior to requesting 20 percent FF funds. Under separate guidance, high-revenue recreation fee parks are required to evaluate the feasibility of using 80 percent recreation fees for capital investment projects, prior to submitting these projects for line-item construction funding. Parks with PI/LSI obligations should prioritize these needs above proposed capital investment projects. The exception to the general rule in category I (contract proceeds) contemplates a park setting aside funding from multiple sources.

If, after a thorough analysis of these steps, the park determines 20 percent FF funds are needed, the regional office must review the request. If the regional office agrees with the

park's analysis, the regional office should submit the results of the park fund source analysis along with a request for 20 percent FF funds to WASO CS for review. If WASO CS agrees that national funds are required, it will use the following hierarchy to determine the source of funds to be used to pay the PI/LSI:

- ◆ National 20 percent FF funds
- ◆ National 20 percent recreation fees
- ◆ Construction funds

10.2.4.3 Criteria for Use of the Concession 80 Percent FF Funds

Each park must prioritize its use of concession 80 percent FF funds in a manner that is consistent with the criteria set forth in the five categories defined below. Each park must follow these criteria in order, and all needs must be met in a category before funds may be spent in the next category. For example, WASO will not approve funding for projects under category IV until all funding needs are met in categories one, two and three.

Category I – Planning for New and Continuing Commercial Services

This may include:

- ◆ Outsourcing for the required industry expertise to complete market analysis, personal property valuation, comparability studies, financial analysis, CAs, capital improvement plans, CSPs, etc.
- ◆ Travel and other expenses for in-house execution of due diligence steps such as those listed above.
- ◆ Reviewing offers (e. g. evaluation panels).

Category II – Buy-out of Possessory or LSI (in part or in whole)

Such buy-out must be in the best interest of the park's financial obligations, including the obligation to structure future contracts to encourage healthy competition among offerors.

PI and LSI are contractual liabilities that represent compensation due to a concessioner in accordance with its concession contract, for certain construction, or for certain fixture or non-removable equipment replacements (consult each individual contract for the precise definition). By law, concession opportunities must provide concessioners with a reasonable opportunity for profit. When PI/LSI obligations are too high, the contract may not provide a reasonable opportunity for a profit, and the contract may not be feasible for non-incumbent offerors unless the NPS buys down some of the PI/LSI obligation.

Category III – All Other Concessions-related Needs

Concessions-related needs include high priority concession facility improvements, such as reducing the backlog of capital projects, rehabilitating concession facilities, and addressing related infrastructure needs like retrofits for accessibility and structural fire protection, unless those needs are the responsibility of the concessioner. Other concession-related needs include training and travel, facility and condition surveys, managing concessioner construction projects, and construction supervision. Temporary or term positions directly related to concessions management and approved permanent positions may be funded through this source.

Category IV – Non-recurring, High Priority and Urgently Necessary Visitor Services and Resource Management Programs

Projects within this category may include environmental compliance (such as water and waste water treatment), energy conservation (such as energy efficiency and renewable technologies), accessibility, sustainable design and construction, and seismic enhancements (relating to structures).

High-priority resource management programs should be non-recurring projects identified in an approved resource management plan. Proposed projects should demonstrate resource improvement (e.g., stabilization and rehabilitation of cultural landscapes) or resource understanding (e.g., developing resource understanding through non-recurring inventory monitoring evaluations and natural resource CAs).

Projects in this category will only be considered for approval if all funding needs in the previous categories have been met and there are no outstanding concessions-related funding needs.

Category V – Recurring Park Operations

Projects for recurring park operations, including funding seasonal or other temporary positions, interpretation and education, non-concession related construction and maintenance, law enforcement, natural and cultural resources, will only be considered for approval if all funding needs in the previous categories have been met and there are no outstanding concessions-related funding needs. Funding permanent positions of any type is not allowed except as outlined in the following section.

80 percent FF funds may not be used for the following purposes:

- ◆ To maintain, repair, or improve any property in which a concessioner has PI or LSI under the terms of its concession contract.
- ◆ Any expenses that the concessioner has contractual responsibility to cover.
- ◆ Permanent positions except as outlined in the following section. Approved permanent positions will be considered part of category III.

Any deviations from the above prohibitions will require written approval of the associate director of business services.

10.2.4.4 Use of 80 Percent FFs to Fund Permanent Positions

Parks must request WASO approval before funding **any and all** permanent positions out of concession franchise fees (even those positions temporarily funded from concession franchise fees). To request WASO approval, the region and park should submit a request to the Program chief. The following conditions must be met:

1. Parks must submit an individual request for each position. The request must address and meet each of the below criteria. Existing concessions positions may not be converted from ONPS funds to 80 percent FF funds. Only new positions may be funded from 80 percent FF funds.
2. The positions funded by 80 percent FF funds must be directly and explicitly tied to implementation activities under the 1998 Act. Only concessions division employees may be permanently funded out of concession franchise fees. Other positions, such as an architect overseeing a concession improvement program, may be temporarily funded from 80 percent FF funds for the duration of the project. However, this position must be supporting concessions related projects and must move back to its permanent fund source once the

project is completed. Short-term or temporary funding for non-concessions employees performing work that is not related to concession programs will be denied.

3. Only a small percentage of the parks 80 percent FF funds revenue should be tied up in permanent staffing so that a decrease in franchise fee revenue (due to a disaster or franchise fee reconsideration, for example) does not create a fiscal vulnerability for the park. The percentage of revenue may not exceed 10% of the projected 80 percent FF fund revenues received by the park. Exceptions to this provision must be approved on a case by case basis.
4. Parks must submit an organizational chart to show how the employees will be integrated into the overall concessions program at the park.
5. Parks must submit an annual report detailing the positions, salaries, and percent of total franchise fee revenues used for permanent positions. The report must be submitted to both the region and WASO by December 1.

Any deviations from the above requirements will require written approval of the associate director of business services.

10.2.4.5 Franchise Fee Use Planning and Procedures

All parks planning to spend 80 percent FF funds are required to prepare 3-Year Plans in PMIS. The 3-Year Plans document how parks intend to spend 80 percent FF funds over the next three-year period. Parks are required to prepare these plans annually and submit them to their regional office. After review, each region submits the 3-Year plans to the Program. The submission timeline and instructions for 3-Year plans and PMIS approvals are part of the Servicewide Comprehensive Call (SCC). For the most current timeline and guidance please visit the SCC website.

All projects and project components regardless of cost must be region-reviewed and formulated by the region. In addition, all projects and project components regardless of cost must be marked WASO reviewed within PMIS prior to funding. WASO CS Finance Branch reviews the plans for general accuracy and effective management of accounts.

Projects are not formally approved until they are WASO approved in PMIS.

After the 3-Year plans are approved in PMIS, the park must complete a monthly spending plan in an Excel template provided by the WASO CS office for the upcoming fiscal year. This spreadsheet will be used to create the monthly funding advices and allocate funding. If changes to the monthly spending occur over the course of the fiscal year, the regional office must notify the WASO CS Finance Branch.

10.3 Financial Reporting

The financial obligations of concessioners are contractual requirements. Accountability for accurate and timely reporting is a critical element in the success of this relationship between the NPS and the concessioners. The procedures for collecting, managing and applying this concessioner financial information is discussed in this section.

10.3.1 Annual Financial Reporting

Annual Financial Reporting (AFR) is how the program collects and manages financial information for concessions operations.

10.3.1.1 Financial Reporting Authorities

Section 414 of the 1998 Act states "Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concessions 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." (54 USC 101923(a))

36 CFR Part 51 Subpart K states "A concessioner (and any subconcessioner) must keep any records that the director may require for the term of the concession contract and for five calendar years after the termination or expiration of the concession contract to enable the director to determine that all terms of the concession contract are or were faithfully performed."

10.3.1.2 Accounting System

Accounting system requirements are directly stated in each concession contract.

The standard concession contract states "The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the director."

Based on this language:

- ◆ Each concessioner must use an accounting system that provides information on the operations required or authorized by the concessions contract.
- ◆ The accounting system must be directly related to the AFR, and therefore capable of providing the information requested on the AFR.
- ◆ A separate AFR must be submitted for each concession contract.
- ◆ The AFR must only include information on the operations required or authorized by the concession contract, and must not include information for any non-concessions operations.

The standard concession contract states "If the Concessioner's annual gross receipts are \$500,000 or more, the Concessioner must use the accrual accounting method." The accrual accounting method records revenue and expenses in the period they were earned or incurred, as opposed to the cash accounting method, which records revenue and expenses when cash changes hands.

The standard concession contract states "In computing net profits for any purposes of this Contract, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this Contract by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device."

Concessioners may have common property used jointly in concession and non-concession operations. If a concessioner has common property, the concessioner must:

- ◆ Allocate its investment in common property between its concession and non-concession operations according to the extent that it is used by each.

- ◆ Include the common property in the operation where it is principally used, and the other operation must be charged a reasonable rental for its use of the common property.

In all cases, if a concessioner or a CPA hired by a concessioner make assumptions to allocate revenues, expenses, assets or liabilities between concession and non-concession operations, the assumptions must be clearly documented in the AFR.

10.3.1.3 Approved AFR Forms

The type of AFR form that must be submitted varies according to the concessioner’s annual gross receipts. There are two AFR forms that have been approved by the Office of Management and Budget (OMB):

- ◆ Concessioners with annual gross receipts greater than or equal to \$500,000 must use the long form, Form 10-356.
- ◆ Concessioners with annual gross receipts less than \$500,000 must use the short form, Form 10-356A.

Both forms are maintained by the Program, and are updated periodically. The forms are available electronically and in hard copy.

10.3.1.4 AFR Audit/Review Requirements

The audit/review requirements for the AFR are defined in each concession contract and vary according to the concessioner’s gross receipts.

The standard concession contract sections 14(b)(2) – 14(b)(4) state “(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent CPA in accordance with Generally accepted auditing standards (GAAS) and procedures promulgated by the American Institute of CPAs. (3) If annual gross receipts are between \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent CPA in accordance with Statements on Standards for Accounting and Review Services (SSARS) and procedures promulgated by the American Institute of CPAs. (4) If annual gross receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent CPA, unless otherwise directed by the director.”

The table below summarizes these requirements:

Annual Gross Receipts	Audit/Review Requirement
\$1,000,000 or greater	Audit by independent CPA
\$500,000 to \$999,999	Review by independent CPA
Less than \$500,000	None

CPAs can only audit or review standard financial statements such as the income statement, balance sheet and cash flow statement. The long form AFR includes these standard financial statements, but also includes additional statements that are only for NPS use and cannot be audited. The long form AFR schedules that must be audited or reviewed by an independent CPA are A, A-1, B, C, and E. The other schedules do not need to be audited or reviewed by an independent CPA. The actual AFR schedules must be audited or reviewed; other audited or reviewed financial reports submitted by a concessioner do not relieve them of this requirement.

Audits and reviews must include financial notes and a CPA opinion letter. The financial notes may be included on schedule F or as an additional attachment.

Regardless of the audit threshold requirements, any concessioner may be required to submit audited financial statements when the NPS considers it to be necessary.

The superintendent has the authority to waive audit or review requirements. The official documentation for any waiver must be submitted to the region and WASO. Typically, audit or review requirements are only waived in the first year that a concessioner passes the gross receipts threshold. Consult the regional office for assistance responding to waiver requests.

10.3.1.5 Opening Balance Sheet

In addition to the AFR, an opening balance sheet is required for category I and category II contracts. The standard concessions contract language for category I and category II contracts states "Within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner shall submit to the director a balance sheet as of the beginning date of the term of this Contract. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent CPA."

In addition, the standard contract language for category I contracts also states "The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the Concessioner claims a LSI. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed."

An opening balance sheet is not required for category III contracts, but may be requested. The standard contract language for category III contracts states "If requested by the director, within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner must submit to the director a balance sheet as of the beginning date of the term of this Contract. The balance sheet must be audited or reviewed, as determined by the annual gross receipts, by an independent CPA."

Under this language, an opening balance sheet is required if the NPS requests it.

10.3.1.6 Additional Financial Reporting

The information requested for the AFR is the minimum amount required and the NPS may request additional information to supplement the AFR. The NPS may request clarification and/or breakdowns of information already submitted, as well as additional information.

The standard concessions contract states "The director from time to time may require the Concessioner to submit other reports and data regarding its performance under the Contract or otherwise, including, but not limited to, operational information."

10.3.1.7 Encumbrances and Transfers

(See Chapter 6 for additional information on contract transfers and encumbrances)

10.3.2 AFR Submission

Timely submission of concessioner financial reports is critical to the successful execution of contracts and is a fundamental element supporting accountability.

Regional offices are responsible for monitoring submissions and ensuring that all AFRs are received by the due date stated in the concession contract. Regional offices should work with park employees to contact concessioners if AFRs are late.

Parks are responsible for noting any late or missing AFR submissions on the AOR and adjusting the rating accordingly, if appropriate.

The Program manages the AFR submission system, and makes AFR information available to parks and regions after receiving and processing all submissions.

10.3.2.1 AFR Due Dates

The due date for AFRs is defined in each concession contract and is based on the fiscal year end for the concessioner. The standard concession contract section 14(b)(1) (for category I) states "The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the director ("Concessioner Annual Financial Report")."

In rare cases, the due date is based on a different time-period or is a specific date. The due date will always be specified in the contract. On occasion, concessioners request an extension of the AFR due date. Granting or denying the request for extension is the responsibility of the park superintendent. A reasonably timed request with proper justification for an extension may be granted or denied by the superintendent. Likewise, contract compliance instructions indicate that if the AFR was not received, was received late, or was properly reviewed/audited, the superintendent may use his or her judgment to determine if the concessioner is in contract compliance.

If a superintendent receives a request for extension of the AFR due date from a concessioner, the superintendent must notify the region of this request. If the extension request is granted, the superintendent must submit to WASO and the region a signed copy of the official response that grants an extension. This documentation will be filed with the corresponding AFR as record of approval.

Cases in which requests for extension are perennial and based on proper justification, the superintendent may consider working with the region to modify the concession contract to address the annual issue with AFR due dates.

10.3.2.2 Electronic Submissions vs. Hard Copy Submissions

Concessioners must submit AFRs electronically. A concessioner must request permission from the park superintendent to submit a hard copy AFR. The superintendent must approve or deny the request in writing and provide the concessioner with a copy of his/her decision. If the request is approved, a copy of the approval must be attached to the hard copy AFR when submitted. The approval applies only to the current reporting year.

10.3.3 AFR Review

Timely content review of financial reporting is a foundational element in providing the necessary accountability in executing concessions contracts.

Regions are responsible for reviewing AFRs, but may delegate this responsibility to parks. Minimum review responsibilities are as follows:

- ◆ Ensure that all appropriate AFR schedules and line items are complete. Areas of emphasis include:
 - PI or LSI additions or disposals.

- RMR deposits, withdrawals, projects and approvals.
- Franchise fee payments and reconciliation.
- Audit and review opinion letters are completed and submitted as appropriate and provide unqualified opinions.
- Operational statistics.
- Identify items that are incomplete or appear to be inaccurate.
- ◆ If an AFR is incomplete, the reviewer must contact the concessioner, identify missing or incorrect information, and maintain contact with the concessioner until the AFR has been revised and resubmitted.
- ◆ Notify WASO CS program staff of the AFR review or resubmission status.
- ◆ Maintain documentation of the review.

In cases in which a concessioner has multiple concession contracts in multiple parks or regions, the reviewer must notify WASO before requesting additional information or resubmissions.

WASO reviews all long form AFRs and provides short form review support to regions when requested. The priorities for WASO AFR review are:

- ◆ Contracts scheduled for prospectus development during the current fiscal year.
- ◆ The highest-grossing contracts.
- ◆ Remaining long form AFRs.

After reviewing an AFR, WASO provides its review notes to the region and park. WASO also provides AFR review templates to assist regions and parks with reviews. The outline of a prospectus depends on the type of concession contract: category I, II, or III.

Chapter 11: Commercial Use Authorizations (CUAs)

11.1 Purpose

This chapter provides detailed procedures to implement current laws, Executive Orders, NPS Management Policies 2006, and other Service policy related to commercial use authorizations (CUAs). This chapter of the CS Guide consolidates and supersedes all policy memoranda previously issued for CUAs. Policy memoranda and guidance issued after the effective date of this chapter of the CS Guide have not been incorporated and still are in effect.

11.2 CUA Program Statutory and Policy Framework

Section 418 of the 1998 Act authorizes the NPS to issue CUAs to authorize a private person, corporation, or other entity to provide commercial visitor services in parks. Without a CUA, other permit, contract, or other written agreement with the United States, such activities otherwise are prohibited under 36 CFR § 5.3. CUAs are required if an operator provides goods or services to park visitors that: 1) take place at least in part on property managed by the NPS; 2) use park resources; and 3) are for the purpose of monetary gain or profit.

The 1998 Act authorizes the NPS to issue CUAs only for appropriate visitor services (See Section 3.4.1) and requires the NPS to:

- ◆ Collect a reasonable fee that recovers the NPS's costs for the administration and management of the CUA, at a minimum
- ◆ Take appropriate steps to limit the liability of the United States arising from the provision of visitor services under the CUA
- ◆ Limit for-profit CUAs for services originating and provided solely within an NPS unit (in-park CUAs) to operations with annual gross receipts of no more than \$25K
- ◆ Limit CUAs for services originating and terminating outside an NPS unit to incidental use of park resources
- ◆ Only issue CUAs for commercial services that will have no more than minimal impact on resources and values of the park
- ◆ Prohibit CUAs from constructing any structure, fixture, or improvement on NPS-managed lands
- ◆ Limit the CUA term to a maximum two years with no renewal rights
- ◆ Limit the number of CUAs or establish limiting conditions to ensure preservation and proper management of park resources and values

A CUA does not exempt the holder or clients from NPS entrance fee requirements (see Reference Manual #22, Section 9.3 and 9.4) nor does it grant automatic access to areas controlled by reservation systems.

11.3 Compliance Process for CUAs

The NPS must comply with a variety of federal, state, and local environmental laws and regulations when considering whether to issue a CUA. These laws and regulations include, but are not limited to, the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the Endangered Species Act (ESA).

The NPS must initiate the compliance process if the requested commercial use is consistent with park purpose and does not conflict with park management plans, park policies, or regulations, and the superintendent is interested in allowing the proposed commercial use. The NPS does not have to allow every proposed activity. The compliance process allows NPS to evaluate

resource impacts associated with the commercial use.

If the compliance process reveals a proposed commercial use will cause no more than minimal impact to park resources and values under normal circumstances, required NEPA documentation must describe how the action fits within a categorical exclusion (CE). Parks may avoid preparing separate CE documentation for each CUA within a specific commercial use category by using programmatic CEs. Programmatic CEs provide NEPA documentation for multiple instances of an ongoing or recurring activity when the activity or activities and resulting impacts are predictable. Parks must review programmatic CEs every five years, at a minimum.

If the proposed commercial use has the potential to cause more than minimal adverse impacts under normal circumstances, the NPS must deny the CUA request because the 1998 Act requires CUAs to have no more than minimal impact. If the park superintendent wishes to allow the commercial use, the park staff may consider developing a concession contract and proceed with a more comprehensive environmental analysis, including preparing an environmental assessment (EA) or environmental impact statement (EIS), if necessary (See Section 11.4).

When a superintendent wants to issue a CUA for a new commercial use not covered under existing NEPA documentation, the NPS must include the costs of the compliance process in the CUA application fee (See Section 11.6.1). Park staff must explain to the applicant the administrative costs associated with the compliance process and provide the applicant the opportunity to withdraw the application before beginning the compliance process. The NPS also may collect an initial administrative fee covering the costs of processing a typical application prior to initiating compliance.

The NPS may divide the total compliance process recoverable costs among existing or projected applicants. For example, if during the compliance process the NPS determines the proposed commercial use is appropriate and desires to issue five CUAs allowing the commercial use, the park may divide the compliance process recoverable costs by five and charge each applicant, including the initial applicant, one-fifth (1/5) of those costs.

11.4 CUAs vs. Concession Contracts

CUAs, like concession contracts, authorize third parties to provide commercial visitor services in parks. CUAs, like other permits, authorize *appropriate* activities in parks. Concession contracts, in comparison, authorize *appropriate* commercial activities that park management has determined to be *necessary* for public use and enjoyment of a park area (See Section 3.4.1). In other words, CUAs do not have to provide the visitor service while a concessions contract requires how and when the concessioner must provide the service. Other key differences between CUAs and concession contracts include:

- ◆ CUAs have a two-year maximum term and concession contracts may have terms up to 20 years
- ◆ The NPS does not approve CUA holder rates for visitor services except in rare cases when NPS limits the number of CUAs issued for the services (See Section 11.10)
- ◆ The NPS does not provide a CUA holder a reasonable opportunity to make a profit

Certain circumstances indicate when the NPS may consider issuing concession contracts rather than CUAs or may prompt the NPS to convert an existing CUA to a concession contract. These indicators include:

- ◆ The NPS determines that a service previously determined as appropriate has become necessary because it provides an essential service or facility not available within a reasonable distance from the park
- ◆ The NPS determines that it needs to strictly manage operators or associated impacts
- ◆ The NPS determines associated impacts are more than minimal
- ◆ The NPS determines it must limit the number of CUAs and conduct a competitive selection process every two years (See Section 11.10.2)

The NPS also should convert existing CUAs to concession contracts when an unanticipated rise in demand or rates causes an in-park CUA's annual gross receipts to exceed the statutory limit of \$25,000. Park staff may issue CUAs for three years after an in-park, for-profit CUA exceeds \$25,000 in annual gross receipts while preparing a prospectus for a concession contract. Alternatively, park staff may consider advertising the opportunity to allow more CUA holders to provide the service to keep the gross receipts per CUA holder under the statutory limit while still meeting visitor demand.

11.5 Required CUA Forms

The NPS must use the Office of Management and Budget (OMB) approved CUA application (NPS Form 10-550), annual CUA report (NPS Form 10-660), and monthly CUA report (NPS 10-660A) forms. CUAs issued must use NPS Form 10-115. No other CUA forms are allowed. The OMB-approved form text and formatting may not be altered, as alteration may result in unapproved information collection. As explained below, however, park staff may develop and include in the CUA itself terms and conditions specific to the park and the CUA operations.

11.5.1 Required CUA Application

The OMB-approved CUA application contains standard conditions to which every CUA applicant must agree. The conditions were developed in accordance with the 1998 Act as well as regulations applicable to entities under contract with the United States of America. These standard conditions require the CUA applicant to:

- ◆ Comply with all applicable laws and regulations, and conditions of the authorization
- ◆ Protect the United States, its agents, and employees from all liabilities and claims
- ◆ Reimburse the NPS for all costs incurred by the NPS as a result of accepting and processing the application and managing and monitoring the authorized activity
- ◆ Provide a statement of its gross receipts from its activities under the authorization
- ◆ Maintain an accounting system and grant the NPS access to its books and records at any time for the purpose of determining compliance with the terms and conditions of the CUA
- ◆ Provide commercial services to visitors at reasonable rates satisfactory to the NPS

The OMB-approved CUA application prohibits the CUA applicant from:

- ◆ Knowingly providing false information
- ◆ Requiring clients to sign a waiver of liability, insurance disclaimer, or indemnification agreement
- ◆ Asserting any legal claim that they hold a trademark, tradename, servicemark, or other ownership interest in the words "National Park Service", the initials "NPS", or official name of any unit or part thereof
- ◆ Constructing any structures, fixtures, or improvements in the park area

- ◆ Obtaining a CUA if they are employed by the U.S. Department of the Interior²

11.5.1.1 Developing Special Park Conditions

Park staff may create special park conditions specific to an approved commercial use to ensure the CUA holder conducts business in a manner consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. Park staff add these conditions to the standard conditions included in the OMB-approved application. Special park conditions should not include information already included in the standard conditions nor should they conflict with or contradict the standard conditions. The required CUA compliance process (see Section 11.3) is an ideal time for an interdisciplinary team to develop these special park conditions.

Special park conditions may include information such as allowable operating times and locations and limits to group size. For some approved commercial services, park staff also may require CUA holders to obtain and maintain licenses, registrations, and training certificates. Park staff must identify these special park conditions and any additional documentation requirements in the CUA application.

Park staff should consider the following when creating special park conditions:

- ◆ Using "must" to describe the obligations of the CUA holder
- ◆ Using the similar conditions developed for the same commercial use in nearby parks
- ◆ Providing advanced notice of operational changes required by special park conditions so current CUA holders and future CUA applicants may plan for those operational changes (e.g. providing notification six months before accepting CUA applications that, beginning for the next season, CUA holder employees operating in the park must have current first aid and CPR certifications)

11.5.2 Required CUA Reporting

All CUA holders must provide activity reports to the NPS using the OMB-approved annual and monthly CUA reporting forms. The NPS uses information from these forms to understand the effects of commercial uses authorized by CUAs, including effects on natural and cultural resources, effects on other park visitors, and financial impact on local and regional economies. The NPS must deny subsequent CUA applications until the CUA applicant submits past-due required activity reports.

The annual CUA report requires the CUA holder to report visitor use statistics, reportable injury data, total gross receipts, and gross receipts earned from in-park or park-dependent operations. The NPS defines park-dependent operations as those commercial activities that are packaged and sold, marketed to include, or coincidentally include, entry into the park boundaries for part of or all of the activity duration.

The NPS requires CUA holders to complete and submit the annual CUA report by end of January for the previous calendar year. Park staff must report CUA holder information collected by annual CUA reports to the regional office. This data request generally occurs during the first

² U.S. Department of the Interior (Department) ethics regulations at 5 C.F.R. § 3501.103(c) prohibit Department employees, their spouses, and minor children, from acquiring or retaining permits, leases, and other rights in Federal lands granted by the Department. This prohibition includes any commercial use authorization to conduct commercial activities or services on Department property.

two months of the calendar year with a due date of February 28. Concurrently, regional chiefs must provide to the regional director a report of all CUA holders reporting annual gross revenue of \$1 million or more.

Park staff may require CUA holders to submit the monthly CUA report if the NPS relies upon collected data to determine visitor use levels and associated impacts. The monthly report requires CUA holders to provide monthly visitor use statistics and reportable injury data but no financial information.

Park staff may include additional reporting tables in both the annual and monthly CUA reports to obtain additional visitation information (e.g., the number of visits to a specific park location). The OMB approved annual and monthly report forms include examples of these reporting tables.

11.5.3 CUA Forms Security and Retention

The Privacy Act requires the NPS to secure CUA records and forms at all times so that only the CUA program staff has access to this information. The NPS must store hard copies of CUA records and forms in secure filing cabinets and electronic records on secure drives, not shared drives allowing access by unauthorized personnel. Business information necessary to contact the CUA holder is not confidential. (See Section 2.7)

11.6 CUA Fees

The 1998 Act requires the NPS collect a reasonable fee for CUAs to recover associated management and administrative costs. The reasonable fee must allow the NPS to recover, at a minimum, all costs incurred by the NPS that it would not have incurred had the commercial activity not taken place.

Additionally, OMB Circular No. A-25 establishes federal policy and guidance on the scope and activities subject to user charges and provides that user charges either will be sufficient to recover the full cost of providing the benefit or will be based on market price. Specifically, Sections 6.a. and 6.d. of that circular direct how agencies should determine the amount of user charges to assess and how to determine full cost and market price.

The 1998 Act and OMB Circular No. A-25 allow the NPS to go beyond cost recovery and instead charge the market price. If the market price is higher than cost recovery, the NPS may charge that higher amount, which may yield net revenue to the park. (See Sections 11.7 and 11.8)

11.6.1 CUA Application Fee

The CUA application fee is a mandatory, one-time, non-refundable fee submitted by the applicant with the completed application. The NPS may not process the CUA application until receiving the application fee. The application fee must be sufficient to allow the NPS to recover all administrative costs associated with reviewing and approving or denying applications for CUAs. These include, but are not limited to:

- ◆ Preparation, mailing, and distribution of forms and correspondence including envelopes, paper, data processing, printing services, postage, and mailing
- ◆ Initial review to make sure the applicant has supplied all required information
- ◆ Compliance processes

NPS may implement a CUA application fee schedule, or standard CUA application fee, by assessing and documenting the average cost of reviewing and processing the same or similar CUA applications. NPS must maintain the supporting administrative record for fifteen years after it ceases using that CUA application fee schedule. The NPS must publish the established CUA application fee schedule on the applicable park website.

The NPS must make the CUA applicant aware of application fees and the requirement to pay the fee during preliminary discussions, including by posting the information on the park website. The NPS also must clearly explain that the applicant will be responsible for application fee payments even if the NPS denies the application. Ultimately, the application fee includes all costs to the NPS from the time of first inquiry until the NPS signs and issues the CUA or denies the application.

11.6.2 CUA Management Fee

The NPS must charge CUA holders a management fee that at a minimum recovers the costs of all CUA management after application approval. CUA management includes, but is not limited to, correspondence with the CUA holder, in-the-field monitoring, and the mitigation of resource impacts caused by the commercial activity. The NPS may calculate CUA management fees by calculating direct cost recovery or by assessing a market price management fee.

11.6.2.1 Direct Cost Recovery Management Fee

The NPS may calculate a CUA management fee by determining the direct costs of managing the commercial service (direct cost recovery). Direct cost recovery allows the NPS to recover the full costs incurred by all park divisions involved in support of the commercial use, including monitoring the activities authorized by the CUA and cleaning up or restoring park lands or facilities after the activities have ended. These costs include charges for NPS personnel, equipment, and materials.

Park staff must closely track the personnel hours and use of equipment and materials necessary for CUA management and charge the CUA holder a management fee that recovers the cost of those personnel, equipment, and materials. Calculating direct cost recovery can be challenging when park staff are tasked with managing multiple CUAs. When the NPS uses direct cost recovery to calculate CUA management fees, the CUA application must include a condition notifying the CUA holder it must pay for additional costs incurred by the NPS for managing the use.

NPS may implement a CUA management fee schedule, or standard CUA management fee, by assessing and documenting the average cost of managing the same or similar CUAs. NPS must maintain the supporting administrative record for fifteen years after it ceases using that CUA management fee schedule. The NPS must publish the established CUA management fee schedule on the applicable park website.

11.6.2.2 Market Price Management Fee

Market price reflects the commercial value of the business opportunity. One method to calculate market price is to assess a fee based on the gross receipts earned as a result of doing business authorized by the CUA. The NPS uses the following tiered methodology to assess the market price management fee for CUAs, which is the same methodology used to assess franchise fees for small concession contracts (See Section 10.2.1.3):

CUA Gross Receipts	CUA Management Fee
<\$250,000	3% of gross receipts (minus application fee)
\$250,000 to \$500,000	4% of gross receipts (minus application fee)
>\$500,000	5% of gross receipts (minus application fee)

The above is a tiered fee best explained by example. Suppose a CUA holder earns \$750,000 in gross revenue as a result of doing business authorized by the CUA. The NPS will charge 3% of gross receipts up to \$250,000, 4% for the next \$250,000, and 5% for the remaining \$250,000, for a total CUA management fee of \$30,000, minus the application fee.

When charging a market price management fee based on percentage of gross receipts, the combined charges for the application fee and the market price management fee may not exceed the above described limits. For example, the NPS may charge an application fee of \$150 plus a 3% of gross receipts market price management fee. The CUA holder will deduct the \$150 application fee from the 3% of gross receipts before remitting at the end of the season, so as not to exceed the market price. If the calculated market price fee is less than the application fee, the NPS retains the application fee.

Other methods of determining market price are to charge a per person fee or to assess the fees used in the surrounding market for management of similar services. For instance, if a neighboring municipality charges an entity \$300 to conduct a yoga class in a city park, the NPS may adopt that \$300 fee as the market price for similar services.

As stated above, the NPS must recover all costs associated with CUAs. Consequently, any market price management fee must be sufficient to recover all costs associated with managing the CUA. This includes utility costs and fair market value rent, if applicable. If the market price fee, calculated using any of the above methods, does not allow for full cost recovery, the NPS must default to the direct cost recovery method.

Park staff must notify the appropriate regional chief of commercial services by email and must receive concurrence before implementing a CUA market price management fee. Generally, the NPS should notify current CUA holders at least 180-days prior to implementation of a market price management fee based on percentage of gross receipts.

11.6.3 Reviewing Costs and Fees

The NPS must review the costs associated with administering and managing CUAs at least every two years to account for inflation, changes in wages, changes in personnel involved in the CUA process, and changes in related costs, and adjust all fees to assure recovery of full costs. The superintendent must approve the fee review and any fee changes in writing before implementing any fee change.

When the NPS determines it will increase the CUA application or management fee schedule 10% or more above existing fees, park staff must notify current CUA holders of the fee change in writing and publish the new fee schedule on the park website at least 60 days before the next CUA application period begins. Park staff must review the costs well ahead of this deadline to ensure timely implementation of any changes.

11.6.4 Collecting Fees

The NPS may accept payment through any of the following methods (in order of preference): Pay.gov or other approved online methods, credit card, check, or money order. The superintendent also may require a performance bond to cover post-activity clean-up or restoration when those costs are significant or difficult to calculate precisely in advance.

As stated above, the NPS must collect the non-refundable application fee with the CUA application and deposit it upon receipt. The NPS collects CUA management fees either at the time of application if based on an established fee schedule, in installments as the NPS incurs management costs, or after the commercial activity has occurred at the same time as the submittal of the annual report.

The NPS may issue a bill of collection to collect any overdue costs. CUA applicants must provide their Employer Identification Number (EIN) and park budget offices may use this information for overdue fee collection. The NPS must deny subsequent CUA applications if a CUA holder has overdue CUA fees.

11.7 CUA Accounting

The NPS must deposit and expend CUA funds from the following CUA account:

- ◆ Fund: XXXP1036C4 to signify a no-year fund.
- ◆ Functional Area: PROCXCXC4.XZ0000.
- ◆ WBS assigned at the park level

In cases where the regional office manages the CUA application process, the budget office deposits the application fees into the regional account and deposits management fees into specific park CUA accounts.

The NPS may carry over revenues into future fiscal years when it does not expend all CUA fees by the end of the fiscal year. Regions will sweep these carryover balances at the end of the fiscal year and reallocate the funds at the beginning of the next fiscal year subsequent to a WASO Commercial Services Program review to ensure compliance with expenditure guidelines.

11.8 CUA Fund Expenditure

The NPS has two categories for priority use of CUA fees. The NPS must meet all funding needs in Category 1 before spending on Category 2 needs.

Category 1 Expenditures

The 1998 Act directs the NPS to collect a reasonable fee to recover administrative and management costs associated with the CUA program. Examples of appropriate spending include:

- ◆ Account reimbursement for permanent personnel costs for staff assigned to administer or manage uses authorized by CUAs
- ◆ Personnel costs for temporary, term, or seasonal staff assigned to administer or manage uses authorized by CUAs
- ◆ Costs of official travel and training for staff assigned to administer or manage uses authorized by CUAs
- ◆ Material and supply costs for CUA program, including postage and printing, equipment

purchase or rental, computers, etc.

- ◆ Costs associated with preparation, review, and distribution of documentation of environmental and cultural compliance
- ◆ Reimbursement of costs related to utilities provided directly to CUA holders
- ◆ Other spending directly tied to CUA program cost recovery

Category 2 Expenditures

The NPS may expend CUA fees on Category 2 funding needs only after fully funding Category 1 expenses. Category 2 expenditures include projects designed to 1) provide mitigation for impacts associated with uses authorized by CUAs use and 2) improve or enhance the experience of park visitors.

The WASO budget office has determined there is no need to enter projects fully funded by CUA funds into the Project Management Information System (PMIS). When projects are partially funded by CUA funds, park staff may indicate CUA fund expenditure as “other fund.”

11.9 CUA Insurance

CUA holders must have commercial general liability insurance as well as other insurance coverage specific to the commercial operation authorized. The NPS must identify the coverage types and required minimum insurance coverage amounts prior to CUA issuance to ensure a CUA holder has the ability to: a) cover claims for bodily injury, death, and property damage arising from any act or omission of the operator; and b) protect the government against potential liability for claims based on the operations of the operator.

The NPS sets minimum insurance requirements in an amount that should address claims related to a particular service or activity. CUA applicants, however, must consult with their own insurance brokers and secure insurance policies sufficient in scope to cover the potential risks of their specific business operation.

Park staff include park-specific insurance requirements as an attachment to the CUA application. CUA liability insurance policy requirements typically will not change during the term of the CUA. CUA holders who wish to add services must apply for a new CUA and obtain any additional insurance required for that authorization.

The NPS has established the following liability insurance requirements:

- ◆ Liability insurance policies must name the United States of America as additional insured.
- ◆ Insurance companies must have a rating of at least A- by the most recent edition of A.M. Best’s Key Insurance Reports (Property-Casualty edition) or similar insurance rating companies (Moody’s, Standard and Poor’s, or Fitch). This rating must be noted on the certificate of insurance or provided in a separate document with the submission of the CUA application.

11.9.1 Commercial General Liability Insurance

For commercial general liability insurance, the NPS has established a \$500,000 per occurrence minimum; however, some activities with increased risk potential may require increased coverage. The superintendent ultimately determines the per occurrence minimums and sets those minimums in an amount that addresses claims related to a particular service or activity.

The NPS has established approved minimum commercial general liability coverage for recreation-based services that also apply to CUAs for similar services (See Section 4.3.8). Park staff may contact the regional or WASO CUA coordinator for assistance in determining insurance policy minimums.

11.9.2 Other Types of Liability Insurance

Commercial Automobile Liability and Physical Damage Insurance

If a CUA holder transports passengers or uses a vehicle in the performance of the service specifically authorized by the CUA, they must obtain commercial automobile liability and physical damage insurance. This ensures the CUA holder possesses the financial capability to cover claims for bodily injury, death, and property damage arising from the use of a vehicle. If the CUA holder does not use a vehicle as described above (e.g., uses a vehicle to meet clients within the park and that specific use is not identified in the CUA), commercial automobile liability insurance is not required.

Commercial auto insurance policies have three basic components: (a) physical damage insurance, which includes collision insurance; (b) liability insurance, which includes coverage for bodily injury, property damage, uninsured motorists, and underinsured motorists, and; (c) other coverage, which includes medical payments, towing and labor, rental reimbursement, and auto loan coverage.

Commercial automobile insurance coverage types are identified by auto designation symbols (1-9). Each symbol represents the type of vehicle protected by the applicable automobile liability policy. CUA insurance certificates typically will reflect one or more of the following symbols:

- ◆ Symbol 1, "Any auto" provides broadest coverage; covers any auto.
- ◆ Symbol 2, "Owned autos" provides coverage only for vehicles owned by the CUA holder, including those acquired after the policy begins.
- ◆ Symbol 7, "Specified auto" provides coverage for vehicles listed on the insurance policy.
- ◆ Symbol 8, "Hired autos" provides coverage only for autos leased, hired, rented, or borrowed by the CUA holder. It does not include autos leased, hired, rented, or borrowed for use by an employee, partner, or member of an insured's household.
- ◆ Symbol 9, "Non-owned autos" provides coverage for autos that the CUA holder does not own, lease, hire, rent or borrow, but are used for business purposes.

Currently, the commercial automobile liability insurance coverage requirements for *interstate* transport of passengers by CUA holders are:

Commercial Vehicle Insurance Interstate Passenger Transport	Minimum per Occurrence Liability Limits
Up to 6 passengers	\$1,000,000
7-15 passengers	\$1,500,000
16-25 passengers	\$3,000,000
26+ passengers	\$5,000,000

The commercial automobile liability insurance requirements for interstate operation of autos used in performance of the service in the park, but not to transport passengers, are:

Commercial Vehicle Insurance Interstate Operations (No Passenger Transport)	Minimum per Occurrence Liability Limits
Small fleet vehicles under 10,001 pounds	\$300,000
Fleet vehicles 10,001 pounds or more	\$750,000

The NPS has not established commercial automobile liability minimums for intrastate auto use by CUA holders because each state has unique rules and regulations. Park staff must refer to individual state requirements and use those state requirements or the interstate requirements, whichever are greatest.

Protection & Indemnity (P&I) Vessel Insurance

CUA holders authorized to transport passengers aboard or use a motor vessel may have P&I vessel insurance to cover claims for bodily injury, death, and property damage arising from the use of the vessel as an alternative to commercial general liability insurance (see Section 11.9.1). NPS has established a \$500,000 per occurrence minimum for P&I coverage. The CUA holder is responsible for ensuring its P&I coverage is sufficient in scope to cover the potential risks.

CUA holders who have P&I insurance do not need to purchase commercial general liability insurance if the services authorized by the CUA occur solely onboard the vessel. If the services authorized by the CUA include off-vessel activity, the CUA holder must obtain shore excursion coverage as part of the P&I policy or obtain commercial general liability insurance at the limits set out above to cover those activities (See Section 11.9.1).

Aircraft Liability Insurance

CUA holders authorized to transport passengers by aircraft or use an aircraft in the park are required to obtain aircraft liability to cover claims for bodily injury, death, and property damage arising from the use of the aircraft. NPS has established a \$1,000,000 per occurrence minimum for aircraft liability coverage. The CUA holder is responsible for ensuring its aircraft liability coverage is sufficient in scope to cover the potential risks.

CUA holders who have aircraft liability insurance do not need to purchase commercial general liability insurance if the services authorized by the CUA occur solely aboard the aircraft. If the services authorized by the CUA included off-aircraft activity, the CUA holder must obtain additional commercial general liability insurance to cover those activities.

Property Insurance

In limited circumstances, parks may assign the use of park property to a CUA holder. In those circumstances, the CUA holder must secure property insurance to provide the financial means for CUA holders to repair or replace damaged park property within their care and control. The NPS will provide the Insurance Replacement Values for the structures.

Umbrella Liability Insurance

Excess, or umbrella, liability insurance is designed to provide protection against catastrophic losses and generally is written in addition to other primary liability insurance policies such as commercial general liability, commercial automobile liability, and employer's liability.

If the CUA holder’s primary insurance policy does not meet the NPS established limits for commercial general liability, property liability, or commercial automobile liability, the CUA holder may obtain additional coverage through an umbrella liability insurance policy. Oftentimes, the umbrella policy is less expensive than purchasing the full required liability insurance under a primary policy.

An umbrella liability insurance policy only extends the limits of the primary policy. For example, if a CUA holder is required to provide commercial general liability and commercial automobile liability and they only have the auto policy, an umbrella policy cannot replace the required commercial general liability policy. The table below demonstrates adequate umbrella liability coverage:

Required Liability Insurance	Required Coverage per Occurrence	Primary Policy Coverage per Occurrence	Umbrella Policy Coverage
Commercial General Liability	\$1,000,000	\$500,000	\$1,000,000
Commercial Automobile Liability	\$1,500,000	\$1,000,000	

Professional Liability Insurance

Professional liability insurance (PLI) protects professionals such as accountants, lawyers, and physicians against negligence and other claims initiated by their clients. Professionals who have expertise in a specific area require this type of insurance because commercial general liability insurance policies do not offer protection against claims arising out of business or professional practices such as negligence, malpractice, or misrepresentation. NPS does not require or accept PLI for CUAs.

11.9.3 Required Certificate of Liability Insurance

CUA applicants must provide proof of required liability insurance coverage upon application submittal, and CUA holders must provide proof of renewed coverage through the CUA term. Typically, that proof is provided through an Acord 25 Certificate of Liability Insurance although NPS may accept other insurance certificates provided they contain the information included on the Acord 25 certificate.

The insurance certificate must:

- ◆ Be written in English with monetary amounts reflected in U.S. dollars (\$)
- ◆ Show the current policy period
- ◆ Name as insured the business or person applying for the CUA
- ◆ Name the United States of America as additional insured³
- ◆ Name as additional insured any third-party doing business under the CUA
- ◆ Reflect at a minimum the coverage amount required in the CUA application
- ◆ Show any additionally required insurances in the amount required

³ The CUA applicant also may list the National Park Service and the NPS unit as additional insureds in addition to listing the United States of America.

- ◆ Include insurance provider rating (may appear in an additional document)

11.9.4 Visitor Acknowledgment of Risk

NPS does not allow CUA holders to request or require visitors to sign a waiver of liability, insurance disclaimer, or indemnification agreement. The NPS must ensure CUA holders who violate this condition discontinue the practice immediately or must suspend the CUA.

The NPS allows CUA holders providing high-risk commercial services to advise visitors of risks associated with the activity using a visitor acknowledgement of risk form (VAR). A VAR can describe the inherent risks of the activity and warn visitors of those risks. The VAR guidance for concessioners applies to CUA holders (See Section 6.9.5).

11.10 Limiting CUAs

The NPS must manage CUAs to protect the resources and values of the park unit and the purposes for which it was established, as well as protect visitors and provide for their enjoyment of the park unit. To meet this obligation, NPS may manage CUA activity through limiting conditions or by limiting the number of CUAs issued. The decision to limit CUAs must be based on reasoned, defensible logic. The reasons the NPS may consider limiting CUA operations include, but are not limited to, the following:

- ◆ Implementation of appropriate park management plans
- ◆ To evaluate resource impacts
- ◆ Implementation of carrying capacity decisions
- ◆ To ensure protection of sensitive ecosystems
- ◆ To provide for visitor safety
- ◆ To enhance visitor experience
- ◆ To balance visitor access between CUA and non-CUA users

The easiest way to limit CUAs is to specify conditions that limit the activity, rather than limiting the number of CUAs issued, by establishing operational requirements that limit use and impacts. Limiting the number of issued CUAs tends to be more complex and usually involves a time-consuming competitive process that must be repeated at least every two years.

When the need to limit use arises, the NPS must consider if the extent of the use indicates the service has become necessary and appropriate justifying conversion to a concession contract.

11.10.1 Limiting CUA Activities through Conditions

This management strategy allows the NPS to limit the authorized activity by establishing CUA conditions designed to control use and impact. The NPS may specify conditions to manage CUAs by limiting the following:

- ◆ The number of user days
- ◆ The operating season
- ◆ Operating dates
- ◆ Operating times
- ◆ Operating location
- ◆ Number of participants or group size
- ◆ Other parameters for the commercial activity or service

Generally, establishing limiting conditions alone does not require a formal planning process except when the CUA conditions restrict public visitor access to a park. Before implementing new limiting conditions on CUA holders' activities or operations, however, the superintendent should prepare a written memorandum to the file describing the conditions or circumstances that require or justify the limitations and should notify all CUA holders in writing of the limitations.

11.10.2 Limiting the Number of CUAs

Generally, unless the NPS formally determines to limit the number of CUAs issued, there are no limits to the number issued. The decision to limit the number of CUAs is delegated to the superintendent, who may base that decision on park enabling legislation, NPS Management Policies, and existing planning documents. To ensure consistency, park staff must consult the regional chief of commercial services when limiting the number of CUAs.

Newly Proposed Commercial Services

The NPS should evaluate potential impacts of newly proposed commercial services and may determine to limit the number of CUAs issued for such services during the initial compliance process. This process allows the NPS to evaluate the resource and visitor impacts of the commercial service to ensure the use is appropriate (see Section 11.3). When the NPS wants to evaluate the financial feasibility of a newly proposed commercial activity, it may issue a limited number of CUAs on a short-term basis to monitor the activity and assess market demand. The NPS does not have to allow every proposed activity, even in limited numbers.

Limiting Existing Commercial Services

Limiting the number of CUAs after the use is established typically requires a more intensive process. In most cases, the NPS must rely on an existing or new planning process to determine the appropriate number of commercial operators. The level of required planning depends on the commercial service, applicant demand for CUAs, potential impacts to visitors, and existing planning documents. The NPS must evaluate possible impacts on private individuals, administrative use, and commercial use and consider balancing the use to accommodate a mix of private, educational, commercial, and administrative users.

The NPS may temporarily cap the number of issued CUAs during the planning process provided the planning effort is ongoing. During the planning process, the NPS should award the limited number of CUAs through a competitive process if the number of applications received exceeds the number of available CUAs. Only the Associate Director, Business Services, may approve an exemption from this competitive process. The superintendent should consult with the regional chief of commercial services to develop the exemption request. The exemption request should be forwarded to the Associate Director, Business Services, through the Regional Director with a copy provided to the WASO CUA program manager.

11.10.3 Competing and Awarding a Limited Number of CUAs

The NPS must develop a specific process to issue the available authorizations when it limits the number of CUAs. The following criteria apply service-wide except for certain operators in the Alaska Region covered by ANILCA. Specific processes include:

Competitive Process

The NPS may use a competitive process similar to concession prospectus issuance and evaluation. Proposal packages for CUAs can use a simplified version of those used for concession contracts.

Park staff must develop the solicitation in consultation with the regional chief of commercial services, and the appropriate Office of the Solicitor should review initial competitive processes, including the solicitation, for legal sufficiency. The solicitations must:

- ◆ Describe the opportunity and the current use.
- ◆ Identify operating conditions necessary to protect the resource and provide a quality visitor experience.
- ◆ Identify minimum qualifications (training, certifications, experience, etc.).
- ◆ Provide a standard operating plan or require the CUA applicant to provide an operating plan as part of the application package.
- ◆ Fully describe the rating criteria, evaluation process, and scoring methodology. Park staff must develop rating criteria and consider basing rating criteria on applicant response to resource protection, visitor safety, and relevant experience questions, at a minimum.
- ◆ Identify the CUA application fee amount and describe the CUA management fee calculation method and projected due date. The NPS must include in the CUA application fee the selection process costs.
- ◆ Notify potential applicants of the rate approval process if applicable. Commercial providers may inflate rates when an activity is in high demand and a monopoly or near monopoly exists. In such cases, the NPS ensures CUA holders provide authorized services at reasonable rates by approving the rates charged. Park staff must refer to Commercial Service Rate Administration Guidelines and work with the regional chief of commercial services when approving rates.
- ◆ Describe any additional reporting requirements. The NPS may require monthly reporting to effectively monitor impacts and determine whether further limitations or conversion to a concession contract is necessary.

The NPS should directly notify current operators and publicize the opportunity on the park website and through a press release, at a minimum. Depending on the type of commercial activity and potential interest beyond the local area, the NPS may post a notice on SAM.gov. Park staff must consult with the regional chief of commercial services to determine regional notification requirements.

The project leader for the competitive process must review each application to ensure it meets the minimum qualifications identified in the solicitation such as required signature, licenses, and insurance certificates. NPS then evaluates the qualified applications.

The NPS must convene a panel of qualified individuals, consisting of primarily NPS staff, to evaluate the qualified applications. During the evaluation process, the panel will use the rating criteria and process described in the solicitation to score and recommend to the superintendent which applicants should receive the limited number of CUAs. Non-NPS staff panel members may assist with the evaluation process but are not allowed to participate in score assignment. The NPS may consider selecting a stand-by operator and offer the opportunity to this stand-by operator without further competition should an operator awarded a CUA choose not to operate.

A CUA holder may not transfer or assign its CUA to another operator. The NPS has the option of not issuing a “replacement” CUA or issuing the CUA through another competitive process. On a case-by-case basis the NPS may consider redistributing use allocations (i.e., park area entrance, user day, etc.) to other CUA holders in lieu of competing and awarding additional CUAs.

Random Selection or Lottery Process

The NPS also may limit the number of CUAs issued through a random selection or lottery process when the training or skill requirements are not significant and generally are consistent among applicants. The NPS should directly notify current operators and publicize the opportunity on the park website and through a press release, at a minimum.

Prior to the random selection or lottery process, park staff must ensure all applicants entered into the selection process have minimum qualifications identified in the solicitation. The NPS may consider selecting a stand-by operator in case one of the applicants selected is not able to provide the service.

The NPS may consider other processes with the concurrence of the regional chief of commercial services. Any such process must be fair, equitable, and transparent to the public.

11.11 CUA Suspension and Revocation

The NPS may terminate a CUA upon violation of any of the CUA conditions or at the discretion of the NPS. While this stipulation is a standard condition included in the CUA application, park staff may develop a CUA suspension and revocation process consistent with this standard condition and provide that process to CUA applicants and CUA holders by posting it on the park website. This encourages transparency and ensures fair and equitable suspension and revocation practices.

A CUA suspension and revocation process must include specific administrative actions NPS will take as a result of a CUA holder violating CUA conditions. These actions should be based on the severity of the violation. For example, a first offense of administrative non-compliance (e.g., failure to submit activity reports on time) may lead to a written warning, repeated violations leading to a potential suspension and even revocation. A more severe first violation (e.g., illegal activity or gross negligence that puts visitors or resources at risk) may result in immediate suspension or revocation, and potential denial of subsequent CUA applications.

If NPS believes a CUA holder has violated a CUA condition, the superintendent or his/her designee must notify the CUA holder of administrative actions to be taken, in writing, as soon as possible. If an employee of the CUA holder, but not the CUA holder itself, has violated a CUA condition, the NPS must identify the employee in the notification to the CUA holder. A suspension or revocation may apply to all services authorized under the CUA; however, a more limited action may be appropriate as circumstances warrant.

The NPS should provide the CUA holder an opportunity to explain the circumstances that led to the violation and an opportunity to take corrective action to avoid future violations before the NPS takes final administrative action at the park level. This does not preclude immediate suspension or revocation of the CUA when warranted as described above.

Park staff should notify the regional CUA coordinator when a CUA holder has been suspended or a CUA has been revoked.

11.12 CUAs to Nonprofit Organizations

Nonprofit organizations may conduct commercial activities on NPS-managed lands or waters. A nonprofit organization is an organization that has been determined by the Internal Revenue Service to be exempt from Federal income taxation as a nonprofit organization under the Internal Revenue Code.

In accordance with the 1998 Act, a nonprofit organization is not required to obtain a CUA to conduct commercial activities in a park area unless the nonprofit organization derives taxable income from the activity. Under 36 C.F.R. § 5.3, however, nonprofits must have a permit, contract, or other written agreement to conduct business in a park area.

Notably, the 1998 Act does not prohibit the NPS from issuing nonprofit organizations CUAs, and the NPS prefers to issue CUAs to nonprofit organizations instead of special use permits to track commercial activities in parks through use of the annual CUA report.

If a nonprofit desires to commercially operate and refuses to apply for a CUA, it must submit a certified written statement under penalty of perjury to the park superintendent that it will derive no taxable income from its activities in the park area, and, if requested, further substantiate this statement to the satisfaction of the NPS by providing proof of nonprofit status. The NPS may consider this information and issue the nonprofit a special use permit (SUP) instead. The NPS must include in the SUP the same terms and conditions that would be required under a CUA, including liability insurance requirements, and may recover "all costs of providing necessary services associated with" the SUP under 54 U.S.C. § 103104.

Non-federal entities under cooperative agreements with assigned federal real property are required to obtain a permit when conducting commercial activities within or outside of the assigned area if those activities are not specifically authorized by the cooperative agreement. The NPS issues a CUA when those activities result in taxable income.

The legislative limit on gross receipts earned by entities issued in-park CUAs does not apply to nonprofits when the nonprofit derives no taxable income from the authorized activity.

Chapter 12: Glossary of Terms

Term	Definition
1965 Act	Public Law (P.L.) 89-249, the Concession Policy Act of 1965. This was the predecessor to the 1998 Act.
1998 Act	P.L. 105-391, the Concessions Management Policy Act of 1998, Title IV of the National Parks Omnibus Management Act of 1998.
20 Percent Franchise Fees	Percent of franchise fees generated from a concession contract in a park t retained at a Service-level for use to support program needs.
36 CFR Part 51	Regulations issued in the Federal Register on April 17, 2000 to implement the 1998 Act.
80 Percent Franchise Fees	Percent of franchise fees generated from a concession contract in the park returned to the park.
Acknowledgement of Risk (VAR)	Form developed by the concessioner and approved by the park that is used to inform visitors of inherent risks associated with the concession service.
Add-on	Term commonly used to describe an increase in concessioner rates/prices to capture extra operating costs such as utilities, transportation for retail products or others.
Administrative Compliance (ADM)	A component of the Concessioner Review Program that contributes to the Annual Overall Rating. It focuses on the evaluation of whether the concession contract terms – operations, maintenance and construction/repair -- are being complied with over the course of the year.
Amendment to Contract	Legal document that changes terms of a contract.
Annual Financial Report (AFR)	Reporting requirements of contracts that document the annual financial operations of a concessioner. Used to verify franchise fee payments at the end of the year. Two different types of forms are provided (Short Form and Long Form) depending on the financial performance of the concession.
AFR Long Form	Form used for concessioners who have annual gross receipts above \$500,000.
AFR Short Form	Form used for concessioners who have annual gross receipts less than \$500,000.
Annual Overall Rating (AOR)	Summary evaluation document and rating in the Concessioner Review Program that incorporates the concessioner's annual evaluation results for Administrative Compliance, Operational Performance and performance in four programs (environmental management, risk management, public health and asset management) and other factors such as visitor satisfaction results.
Asset	Real property that the Service desires to track and manage as a distinct identifiable entity. It may be a physical structure or a grouping of structures, land features, or other tangible property, that has a specific service or function, such as an office building, lodge, motel, cabin, residence, campground, marina, etc.

Asset Management Program (AMP)	Concessioner program consisting of policies, procedures and practices to construct, renovate repair and maintain facilities. Program requirements are dictated by the contract and various exhibits including the maintenance plan.
Assigned Government Personal Property	This exhibit within the contract lists all government-owned personal property assigned for the concessioner's use.
Assigned Land and Real Property Improvements (Concession Facilities)	This exhibit within the contract describes the land area and buildings assigned under the contract.
Balance Sheet	Part of the Annual Financial Report that illustrates the Assets and Liabilities of a concessioner. Contracts also require concessioners to submit an initial balance sheet shortly after the effective date of the contract.
Best Management Practice (BMP)	Policies and practices that apply the most current and advanced means and technologies available to the concessioner to undertake and maintain a superior level of performance reasonable in light of the circumstances of the operations conducted under a contract. BMP's are expected to change from time to time as technology evolves. This term is applied most often to environmental and sustainability performance but may apply in other areas as well.
Business Opportunity	The marketing part of a prospectus that provides information on the future and existing contracts. This document also provides information about the program, the park, and applicable markets.
Capital Improvement	A capital improvement, as further defined in exhibit A to a Category I contract, is a structure, a fixture, or non-removable equipment provided by the concessioner pursuant to the terms of the contract and located on lands of the United States within the park area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture.
Carryover LSI Value	The determined LSI value in an existing LSI improvement that carries over from a prior contract to a new LSI contract.
Category I Contract	Type of concession contract used when the concessioner may be required or allowed to construct or install capital improvements on park area lands and, thus, possibly acquire a leasehold surrender interest. Category I contracts require the concessioner to perform maintenance on assigned structures and landscapes and may require the establishment of a maintenance reserve to help fund some projects.

Category II Contract	Type of concession contract used when a concessioner will operate on assigned land or in an assigned concession facility but may not construct or install capital improvements. For management purposes, this category of contract works best with small operations or those in shared facilities (such as visitor centers).
Category III Contract	Type of concession contract used when no lands or buildings are assigned to the concessioner (thus, no allowed construction or installation of capital improvement. Used primarily for recreation contracts.
Certificate of Insurance	A Certificate of Insurance provides the dates and coverages of the insurance policy as required by the concession contract. A concessioner must provide this to the Service annually and must also provide the Service immediate written notice of any material changes in concessioner's insurance program, including cancellation of any required insurance coverage.
Commercial Services	This term encompasses concessions, CUAs, and leasing (for both businesses and residential purposes). Some parks or regions may use alternative terms such as concession program or business management. Not all regional or park commercial services programs include leasing.
Commercial Services Plan (CSP) /Commercial Services Strategy	Documented process under which the Service evaluates existing planning and other documents at a park to identify potential changes in commercial visitor services. Either develops or considers the criteria for necessary and appropriate services, evaluates the effects on natural, cultural and historic resources, and considers whether services may be financially feasible.
Commercial Services Planning	Requirement of NPS Management Policies, Chapter 10. "Commercial visitor services planning will identify the appropriate role of commercial operations in helping parks achieve the desired visitor use, enjoyment and experiences and will be integrated into other plans and planning processes."
Commercial Services Program (CS or the Program)	Also referenced as the Program, or Commercial Services (CS). This term refers to the entire program that administers concession contracts, commercial use authorizations (CUAs), and leases. The term mainly applies to the Washington Area Support Office (WASO) division overseeing these functions but may also apply to regional or park functions.
Commercial Services Program Chief	This term describes the WASO employee who oversees the WASO CS.
Commercial Use Authorization (CUA)	Authorization issued by the NPS for appropriate commercial visitor activities that have minimal impact on park resources. The 1998 Act provides authority for CUAs.
Comparability	A method identified in the 1998 Act which is the fundamental means the NPS must use to approve concessioner rates for goods and services. Direct comparability is the most basic rate approval application of this process although all rate approval methods are based on this concept.

Competitive Market Declaration	This is a method of rate approval that may be used for those concessioners that operate in a competitive market and derive no competitive advantage from being located in a park or when prices for items or services are routinely negotiated from the buyer and seller (such as antiques).
Component	A portion of an asset or system.
Component Renewal/Replacement	The planned replacement or renewal of a component at the end of its useful life. Component renewal/replacement examples include foundations, building frames, window frames, sheathing, subfloors, drainage, roofs, and building systems such as electrical, plumbing, built-in heating and air conditioning, and rehabilitation of components of historic concession facilities. Component renewal/replacement includes the deconstruction of the existing component and replacement with a new component of equal or superior capability and performance. These actions recur on a periodic cycle of greater than seven years.
Component Renewal (CR) /Replacement Reserve	Term used in newer contracts to describe what known as Repair and Maintenance Reserve. See Repair and Maintenance Reserve.
Computerized Maintenance Management System (CMMS)	A computerized system designed to enhance efficiency and effectiveness of maintenance activities. Also known as CMMS, typical features include planning, scheduling and monitoring of work orders and maintenance needs.
Concession Contract	A binding written agreement between the director and a concessioner entered under the authority of the 1998 Act or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions.
Concession Facilities	The park area lands assigned to a concessioner under a concession contract and all real property improvements assigned to or constructed by the concessioner under a contract.
Concession Facility Improvement Plan (CFIP)	A contractually required facility improvement program funded by the concessioner.
Concession Specialist	Encompasses the various titles used for full-time or collateral duty park employees who oversee commercial services. It also encompasses Program employees at the regional and WASO levels
Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Procedures	Exhibit to the contract that contains required conditions and processes for construction projects including major rehabilitations.
Concessioner Environmental Audit	Assessment of the concessioner's environmental performance in meeting regulatory compliance and contract requirements, and implementing best management practices.

Concessioner Review Program	Program established to evaluation park concession visitor services. The scope of the evaluation covers administrative compliance, operational performance and environmental management, risk management, public health and asset management.
Condition Assessment (CA)	The review and validation of the concession facilities inventory, including the inspection of the assets, the identification of the asset's deficiencies in an in-depth manner, and documentation of the asset's condition as measured against the applicable maintenance or condition standards. The condition assessment provides the basis for long-range maintenance planning as well as annual work plans and budgets.
Construction Costs	<p>Construction cost of a capital improvement means the total of the incurred eligible direct and eligible indirect costs necessary for constructing or installing the capital improvements that are capitalized by the concessioner in accordance with generally accepted accounting principles (GAAP).</p> <p>Eligible direct costs mean the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials; products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing. material storage facilities; power line installation and utility costs during construction; performance bonds; contractors (and subcontractors) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).</p> <p>Eligible indirect costs mean, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans; plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction.</p> <p>The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the concessioner are not eligible indirect costs.</p>

Consumer Price Index (CPI)	A statistic maintained by the U.S. Bureau of Labor Statistics, Department of Labor that is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. This statistic can be used as an economic indicator to adjust costs to estimate changes in values such as LSI, operating expenses, and prices for goods and services.
Contract Specified Rate	Rate approval method used when comparables are not available for unusual services, such as seaplane rides, mountaineering, river running, swimming pool, golf courses, bathhouses, and interpretative services.
Contract Transition	Period in which the existing concession contract is expiring and a new concession contract to replace it is started.
Core	Rate approval method used most often for approving food and beverage rates but also available for other services.
Current Replacement Value	Standard industry costs and engineering estimates of materials, supplies, and labor required to replace facility at existing size and functional capability. This cost includes current costs for planning/design, construction, and construction management.
Development Concept Planning	Part of the long-term planning at a park that tiers off a General Management Plan or other broader plan. A DCP typically identifies specific facilities that may be developed in a certain area.
Deferred Maintenance (DM)	Maintenance that was not timely or properly conducted. Continued deferred maintenance will result in deficiencies.
Deficiency (Asset Management)	Defect in an asset or component that results when maintenance is not performed in a timely manner. Deficiencies may not have immediately observable physical consequences, but when allowed to accumulate uncorrected, lead to deterioration of performance, loss of asset value, or both.
Deficiency (Concessioner Review Program)	Failure by a concessioner to materially meet NPS performance standards for visitor services, risk management, environmental management, public health, asset management or administrative compliance as part of the Concessioner Review Program.
Depreciation (Asset Management)	The deterioration of improvements due to wear, tear, age and use.
Direct Comparability – Full Review	Rate Approval Method: This is the most thorough and directly applicable method that compares concessioner operations and rates to external market using specific criteria.
Direct Comparability – Limited Review	Rate Approval Method: Simplified process to compare concessioner operations and rates to external markets using specific criteria. Typically conducted without a site visit to the comparables.

Environmental Management Program (EMP)	Program developed and implemented by the concessioner to comply with all applicable laws and incorporate best management practices in its facilities and operations pertaining to the protection of human health and the environment. The program must be documented for Category I and II contracts. The program must meet NPS standards but also be tailored to the particular services being provided by the concessioner.
Evaluation Panel	Panel of federal employees (primarily NPS) that reviews and evaluates the prospectus proposals received from interested offerors. This panel produces a recommendation to the deciding official regarding the best offer.
Extension/Continuances	Change in the base contract term to permit operations beyond the original contract period. Extensions have a three-year limit. Continuances apply only to contract awarded under the 1965 Act.
Facility Condition Index	A measure of a facility's relative condition at a particular point in time compared to similar facilities. The FCI rating is a ratio of the cost of repair of an asset's deficiencies (deferred maintenance, recurring maintenance that has been deferred, component renewal that has been deferred, and immediate personnel hazard life safety repairs) divided by the current replacement value for the asset.
Facility Maintenance Software System (FMSS)	DOI Facility Management Software used to manage real property and associated data.
Facility Operations (FO)	Operational actions performed by the concessioner on a recurring basis that meet the daily operational needs of concession facilities. Typical work performed under facility operations includes janitorial and custodial services, snow removal, operation of utilities, and grounds keeping. Certain facility operations requirements may be included in exhibit B (operating plan) to the contract.
Fair Market Value	A valuation component of Possessory Interest developed through a third-party appraisal. References to Fair Market Value are found in PL 89-264, Section 6, as well as specific contracts.
Financial Analysis	Rate Approval Method which has limited application and requires consultation with NPS officials beyond park level.

Fixture	<p>From LSI Contract Exhibit A. Fixtures and non-removable equipment are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered part of the structure such that title is with the director as real property, once installed.</p> <p>Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) that may be constructed by the concessioner pursuant to the terms of an LSI contract are considered non-removable equipment for LSI purposes only. Except as otherwise indicated in LSI contract exhibit A, the term "fixture" includes the term "non-removable equipment."</p>
Franchise Fee	Consideration paid to the Director by a concessioner for the privileges granted by a concession contract.
Franchise Fee Analysis	The analysis done to estimate the payment to the government to provide for a "reasonable opportunity for net profit in relation to capital invested and the obligations of the contract." It includes market, financial, and investment analyses.
Franchise Fee Reconsideration/Adjustment	The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years contains a provision that provides for adjustment of the contracts established franchise fee in the event of extraordinary, unanticipated changes after the effective date of the contract.
Franchise Fee Waiver	The Director may not waive the concessioner payment of franchise fee or other payment or consideration required by the contract, except that a franchise fee may be waived in part by the Director pursuant to administrative guidelines that may allow for a partial franchise fee waiver in recognition of exceptional performance by a concessioner under the terms of a concession contract.
General Management Plan	Long term planning document for a Park.
Generally Accepted Accounting Principles (GAAP)	The standard framework of guidelines for financial accounting used in any given jurisdiction. Generally accepted accounting principles (GAAP) include the standards, conventions, and rules accountants follow in recording and summarizing transactions, and in preparing financial statements.
Gross Receipts	The amount of revenue subject to the franchise fee. Standard language in contracts allows concessioners to delete certain operating expenses from gross revenue to calculate these gross receipts.
Income Statement	Part of the Annual Financial Report that illustrates the Income and Expenses of a concessioner.

Indexing	Procedure for adjusting and approving concessioner rates that were set using either comparability or a financial analysis. The most common index used is CPI.
Insurance	Standard exhibit within the contract that requires the concessioner to obtain the insurance as specified.
Internal Rate of Return	Mathematical calculation which determines the percentage (discount rate) where the net present value of an investment equals the net present value of future cash flows. It is typically used for investment analysis for capital projects. Future oriented.
Lease	A contract by which the National Park Service conveys a right to occupy and utilize real estate or facilities for a specified period of time and for a specified rent. Leases are authorized under 36 CFR Parts 17 and 18.
Leasehold Surrender Interest (LSI)	From LSI contract exhibit A. Means a right to payment in accordance with the part for related capital improvements that a concessioner makes or provides within a park area on lands owned by the United States pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.
LSI Contract	A category I standard language concession contract awarded under the 1998 Act.
LSI Credit Eligible Event	A concessioner is entitled to receive LSI credit for capitalized LCEEs approved by the NPS and funded with concessioner dollars during the term of the contract if all other LSI-related contractual requirements have been met. This is referred to as a crediting activity.
LSI Exhibit	This describes the certain terms and conditions of the contract regarding the nature, scope and applicable conditions of leasehold surrender interest.
LSI Improvement	The general term for real property improvements in which LSI is recognized under an LSI contract.
LSI Value	The general term referring to the value of an LSI improvement.
LSI Tracking Tool	Designed to assist with tracking the estimated value of the National Park Service (NPS) LSI liability specific to concession contracts issued since November 1998 under the Concessions Management Improvement Act of 1998 (the "1998 Act").

Maintenance	The maintenance of concession facilities as described in the contract's maintenance plan. Maintenance includes actions taken under the following maintenance categories - component renewal/replacement, recurring maintenance, facility operations, preventive maintenance, and repair.
Maintenance Plan	The contract exhibit that governs how the concessioner will maintain all facilities as well as grounds, roads. This exhibit is not used for a Category III contract.
Major Rehabilitation	From LSI contract exhibit A. Major rehabilitation means a planned, comprehensive rehabilitation of an existing structure that: <ul style="list-style-type: none"> • The director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the director in special circumstances). • The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.
Manufacturers Suggested Retail Price	Price identified by a product manufacturer, typically printed on the product packaging, which a vendor may use to set the product retail price. This is an approved rate method for some concession retail products.
Mark-up	A rate administration method used to increase retail product prices using industry indices.
Merchandise Pricing (Mark-up)	Rate Approval Method: Used for convenience retail sales items.
National Park Service Concessions Management Improvement Act of 1998	Title IV of the National Parks Omnibus Management Act of 1998. (Public Law 105-391) referred to as the 1998 Act or the Concessions Management Improvement Act of 1998.
New LSI Improvement	An LSI improvement constructed during the term of a current LSI contract.
Non-discrimination	Standard exhibit within the contract that identifies laws that the concessioner must comply with relating to discrimination in employment and service provision. It cannot be changed.
Non-removable Equipment	See definition of Fixture.
NPS Evaluator	NPS employee who has completed Evaluation and Pricing (E&P) training and are qualified to complete concession evaluations under the Concessioner Review Program.
NPS-48	Guidance document promulgated in the mid-1980s that provided policy for concession management. Often seen in a yellow binder, much of this policy has been superseded by policy memo and all will be superseded by the CS Guide.
Operating Plan	Standard exhibit within the contract that governs the concessioner's daily and annual operations. This document is tailored to each park's service types and varies in size and length depending on the nature of the business.
Operational Performance Evaluation	Portion of the concessioner review program that collates the evaluation results for service-specific performance (PEs).

Park	Term used generically to cover all types of NPS park units including national parks, monuments, recreation areas, seashores, and others.
Periodic Evaluation (PE)	Evaluation of the concessioner's performance against service-specific standards as part of the Concessioner Review Program. May be conversationally referred to as a "periodic".
Personal Property	Manufactured items of independent form and utility including equipment and objects that are solely for use by the concessioner to conduct business. Personal property includes, without limitation, removable equipment, furniture and goods necessary for concessioner operations under the concession contract. Examples include trucks and boats.
Personal Property Valuation	A personal property valuation for the government's estimate of the value of all personal property to consider in developing a prospectus.
Possessory Interest (PI)	A compensable interest granted to concessioners under the 1965 Act for capital investments made in real property improvements. Possessory Interest converts to LSI as under an LSI contract.
PI Contract	A concession contract awarded under the 1965 Act which provides for possessory interest.
PI Negotiation/ Arbitration	Process outlined in pre-1998 law NPS concession contracts that define what occurs if the Concessioner and the successor, excepting the Government agencies, cannot agree upon the fair value of any item or items. Specific references to how arbitration is conducted in outlined in existing concession contracts. Additional guidance is provided in 36 CFR Part 51, Subpart H.
Preferential Right to a New Contract	Generally, a right of preference under the 1998 Act requires the director to allow a preferred offeror the opportunity to match the terms and conditions of a better responsive proposal. A right of preference does not provide any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may. Incumbent concessions under contracts generating less than \$500,000 annually and outfitters and guides may qualify for preferred offeror status.
Pre-Rehabilitation Value	Replacement cost of a structure less depreciation prior to a major rehabilitation.
Preventive Maintenance (PM)	Planned, scheduled periodic maintenance activities that are performed weekly, monthly, quarterly, semi-annually, or annually on selected assets or components, typically including inspection, lubrication, and adjustment.
Principle Selection Factor 1 (PSF1)	In the prospectus, a required selection factor focused on the Service's objectives of protecting, conserving, and preserving resources of the park area. 0-5 points
Principle Selection Factor 2 (PFS2)	In the prospectus, a required selection factor focused on the Service's objectives of providing necessary and appropriate visitor services at reasonable rates. 0-5 points.

Principle Selection Factor 3 (PSF3)	In the prospectus, a required selection factor requiring the experience and related background of the offeror, including past performance and expertise in providing the same or similar visitor services as those to be provided under the concession contract. 0-5 points.
Principle Selection Factor 4 (PSF4)	In the prospectus, a required selection factor requiring financial information demonstrating the capability of the offeror to carry out its proposal. 0-5 points.
Principle Selection Factor 5 (PSF5)	In the prospectus, a required selection factor requiring the offer to agree to a minimum franchise fee. The offeror may propose a franchise fee higher than the minimum required. 0-4 points.
Probable Value	Term used to define what Franchise Fees are based upon in a contract. Defined in PL 105-391 as, "a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract.
Proposal Package	The part of the prospectus that sets out the criteria by which the Service will evaluate proposals including a transmittal/offer letter and the primary and secondary selection factors.
Prospectus	Document giving details about a specific concession business opportunity to solicit offers for services. It includes the Business Opportunity, Proposal Instructions, the Proposal Package (with instructions), the Draft Contract with all Exhibits, and appendices that may include the current contract, applicable policies and laws, park specific planning documents, etc.
Public Health Program (PHP)	Concessioner program consisting of policies, procedures and practices to provide a healthy environment for employees and visitors. Key components include those addressing food safety, recreational water safety, illness prevention, surveillance, reporting and incident response. The program addresses requirements administered by the NPS Office of Public Health.
Rate Administration Program	NPS policies procedures and practices developed to meet obligations to approve concessioner prices for goods and services in accordance with the 1998 Act.
Real Property	Federally-owned real estate assigned to a concessioner for the limited purpose of operating its business.
Real Property Improvements	Real property other than land, including, but not limited to, capital improvements.
Reconstruction Costs	Term typically found in Possessory Interest contracts which relates to an element of the determination of sound value. Has been interpreted to mean reproduction costs.
Recurring Maintenance (RM)	Planned work activities to sustain the useful life of an asset or component that reoccur on a periodic cycle of greater than one year. Typical recurring maintenance projects include painting, pump and motor replacement, cleaning, repair and replacement of lighting, engine overhaul, replacement of carpeting, and refinishing hardwood floors.

Regional Chief (RC)	The regional employee who oversees Commercial Services for each region. Some regions use a different functional title.
Repair	Work undertaken to restore damaged or worn out assets or components to a fully functional operating condition.
Repair and Maintenance Reserve (RMR)	A concessioner account that is established in the main body of the contract. RMR funds may only be used to carry out component renewal on a project basis that is authorized in writing by the Service and that is non-recurring within a seven-year time frame. RMR funds may not be expended to construct or install capital improvements. Called Component Renewal Reserve for new contracts.
Replacement	The exchange or substitution of one asset or component for another that has the capacity to perform the same function at a level of utility and service equivalent or superior to the original asset or component.
Replacement Cost	The present cost of replacing an existing capital improvement with one of utility equal to the existing structure, using modern materials and current standards, design and layout.
Reproduction Costs	The present cost of replacing an asset with as nearly an exact replica as (an existing Asset) as modern material and equipment will permit.
Return on Assets	Traditional probability ratio- calculated by Net Profit divided by Assets.
Return on Equity (ROE)	Traditional probability ratio- calculated by Net Profit divided by Equity.
Return on Gross	Traditional probability ratio – calculated by Net profit divided by Gross Receipts.
Risk Management Program (RMP)	Program required by the contract to be developed and implemented by the concessioner to provide a safe environment for employees and visitors. The program must be documented. It must meet NPS standards but also be tailored to the particular services being provided by the concessioner.
Sale and Transfers, Assignments and Encumbrances	Certain transactions by a concessioner require NPS approval for transferring a concession contract associated with the business or using the contract or LSI as collateral for a loan.
Scenario Meeting	Meeting during prospectus development when the superintendent considers the financial and market information to decide the components of the next concession contract.
Secondary Selection Factor (SSF)	For all prospectuses with projected annual revenue above \$100,000 must use SSF1 (see below). The Service may include one or more additional selection factors seeking information on any appropriate topic for a total of not more than 3 points combined.

Secondary Selection Factor 1 (SSF1)	In the prospectus, a required selection factor for all contracts generating more than \$100,000 annually focused on an offeror's environmental program. 0-3 points.
Service Contract Act (SCA)	The McNamara-O'Hara Service Contract Act of 1964 which requires contractors and subcontractors performing services on prime contracts in excess of \$2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. The SCA applies to certain concession contracts.
Service Standards	Over 20 standards for various visitor services (e.g., lodging, rafting guides) developed by the NPS that are used to set concessioner visitor services expectations which are used as concessioner periodic evaluation performance criteria as part of the Concessioner Review Program.
Sound Value	"Sound Value" was defined in the 1965 law as the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value.
Special Accounts	Type of account permitted under pre-1998 law contracts. They contain concessioner funds spent at the direction of Superintendents for capital and maintenance items. No longer permitted under the 1998 law.
Special Attention Item	Service, program or administrative standards designated as particularly important performance criteria for a concessioner under the Concessioner Review Program.
Standard Contract Language	For each category of concession contract, the Service has approved mandatory language for most, but not all, of the contract and its exhibits. Changes to this mandatory language require approval by the Director (as delegated).
Statement of Cash Flow	Part of the Annual Financial Report that illustrates the Cash Position of the concessioner as of a point in time.
Structure	A building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, and parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered to be part of that structure. Interior furnishings that are not fixtures are not part of a structure. (From Exhibit A to the Category I Contract)
Substantial Completion	The date the NPS has approved a capital improvement for use and/or occupancy.
U.S Public Health Service (USPHS)	Independent agency that conducts Public Health Inspections.
Useful Life	The serviceable life of an asset or component.

<p>Visitor Experience Enhancement Authority (VEIA)</p>	<p>Title VII of the 2016 National Park Service Centennial Act, P.L. 114-289 that establishes authority to solicit, award, and administer contracts for the operation and expansion of commercial visitor facilities and visitor programs separate from the 1998 Act.</p>
<p>Washington Support Office (WASO)</p>	<p>NPS Headquarters Office.</p>
<p>WASO Branch Chief</p>	<p>The four supervisory concession management specialist positions at WASO – asset management, contract management, financial management, and planning and development.</p>