

§ 34.7 Cultivation of controlled substances.

In addition to the provisions of § 2.35 of this chapter, the planting, cultivating, harvesting, drying or processing of a controlled substance, or any part thereof, is prohibited.

§ 34.8 Preservation of natural, cultural and archeological resources.

In addition to the provisions of § 2.1 of this chapter, the following are in effect:

(a) Upon nonleased lands, the cutting or removal of any tree, plant, or shrub or part thereof is prohibited without a permit from the Superintendent.

(b) Upon leased lands, the cutting or removal of any tree, plant, shrub or part thereof that is six inches or less in diameter, for the purpose of maintaining its proper health and appearance or for reasons of public safety, is allowed. Cutting or removing any vegetation exceeding six inches in diameter without a permit from the Superintendent is prohibited.

(c) Upon leased lands, the planting of personal gardens or domestic trees is allowed subject to all applicable Federal, State, and County agricultural regulations. *Provided, however:* the Superintendent may temporarily suspend this general privilege in the event of a water shortage or agricultural pest or disease emergency.

(d) Wood gathering is prohibited except in accordance with conditions and within areas designated by the Superintendent. Violation of such conditions or gathering wood outside of designated areas is prohibited.

§ 34.9 Protective custody.

(a) An authorized person, with reasonable cause to believe that a juvenile found within the administrative site has been unlawfully abused or neglected by any person living in the juvenile's place of residence, may take such juvenile into protective custody. An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the appropriate State or local authorities.

(b) An authorized person, with reasonable cause to believe that a person found within the administrative site is

either temporarily or permanently psychologically or mentally impaired to a degree that the person is gravely disabled or that presents a clear danger to that person or another, may take such person into protective custody. An authorized person taking protective custody action pursuant to this paragraph shall deliver the person to the care of the Mariposa County Mental Health Authorities for an initial 72-hour evaluation in accordance with applicable provisions of the California Welfare and Institutions Code.

(c) An authorized person may take into protective custody any juvenile found within the administrative site who is deemed to be a runaway according to applicable provisions of the California Welfare and Institutions Code. An authorized person taking protective custody action pursuant to this paragraph shall deliver the juvenile to the care and custody of the Mariposa County Sheriff's Office.

§ 34.10 Saddle and pack animals.

The use of saddle and pack animals is prohibited without a permit from the Superintendent.

§ 34.11 Boating operations.

The launching or operation of a motor boat is prohibited.

§ 34.12 Information collection.

The information collection requirements contained in §§ 34.6, 34.8 and 34.10 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024-0026. This information is being collected to solicit information necessary for the Superintendent to issue permits and other benefits, and to gather information. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

PART 51—CONCESSION CONTRACTS

Subpart A—Authority and Purpose

Sec.

51.1 What does this part cover?

51.2 What is the policy underlying concessions contracts?

Subpart B—General Definitions

51.3 How are terms defined in this part?

Subpart C—Solicitation, Selection and Award Procedures

- 51.4 How will the Director invite the general public to apply for the award of a concession contract?
- 51.5 What information will the prospectus include?
- 51.6 Will a concession contract be developed for a particular potential offeror?
- 51.7 How will information be provided to a potential offeror after the prospectus is issued?
- 51.8 Where will the Director publish the notice of availability of the prospectus?
- 51.9 How do I get a copy of the prospectus?
- 51.10 How long will I have to submit my proposal?
- 51.11 May the Director amend, extend, or cancel a prospectus or solicitation?
- 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?
- 51.13 When will the Director determine if proposals are responsive?
- 51.14 What happens if no responsive proposals are submitted?
- 51.15 May I clarify, amend or supplement my proposal after it is submitted?
- 51.16 How will the Director evaluate proposals and select the best one?
- 51.17 What are the selection factors?
- 51.18 When must the Director reject a proposal?
- 51.19 Must the Director award the concession contract that is set forth in the prospectus?
- 51.20 Does this part limit the authority of the Director?
- 51.21 When must the selected offeror execute the concession contract?
- 51.22 When may the Director award the concession contract?

Subpart D—Non-Competitive Award of Concession Contracts

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

Subpart E—Right of Preference to a New Concession Contract

- 51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?
- 51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?
- 51.28 When will the Director determine whether a concessioner is a preferred offeror?
- 51.29 How will I know when a preferred offeror exists?
- 51.30 What must a preferred offeror do before it may exercise a right of preference?
- 51.31 What happens if a preferred offeror does not submit a responsive proposal?
- 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?
- 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?
- 51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?
- 51.35 What happens to a right of preference if the Director receives no responsive proposals?

Subpart F—Determining a Preferred Offeror

- 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?
- 51.37 How will the Director determine that a new concession contract is a qualified concession contract?
- 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?
- 51.39 What are some examples of outfitter and guide concession contracts?
- 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?
- 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?
- 51.42 Are there exceptions to this compensable interest prohibition?
- 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?
- 51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?

- 51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?
- 51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?
- 51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?
- 51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?
- 51.49 May the Director grant a right of preference except in accordance with this part?
- 51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

Subpart G—Leasehold Surrender Interest

- 51.51 What special terms must I know to understand leasehold surrender interest?
- 51.52 How do I obtain a leasehold surrender interest?
- 51.53 When may the Director authorize the construction of a capital improvement?
- 51.54 What must a concessioner do before beginning to construct a capital improvement?
- 51.55 What must a concessioner do after substantial completion of the capital improvement?
- 51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?
- 51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?
- 51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?
- 51.59 Will leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?
- 51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?
- 51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?
- 51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?
- 51.63 When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

- 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?
- 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?
- 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?
- 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

Subpart H—Possessory Interest

- 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?
- 51.69 What happens if there is a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?
- 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?
- 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?
- 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

Subpart I—Concession Contract Provisions

- 51.73 What is the term of a concession contract?
- 51.74 When may a concession contract be terminated by the Director?
- 51.75 May the Director segment or split concession contracts?
- 51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?
- 51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?
- 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?
- 51.79 May the Director waive payment of a franchise fee or other payments?
- 51.80 How will the Director establish franchise fees for multiple outfitter and

§ 51.1

guide concession contracts in the same park area?

- 51.81 May the Director include “special account” provisions in concession contracts?
- 51.82 Are a concessioner’s rates required to be reasonable and subject to approval by the Director?
- 51.83 Handicrafts. [Reserved]

Subpart J—Assignment or Encumbrance of Concession Contracts

- 51.84 What special terms must I know to understand this part?
- 51.85 What assignments require the approval of the Director?
- 51.86 What encumbrances require the approval of the Director?
- 51.87 Does the concessioner have an unconditional right to receive the Director’s approval of an assignment or encumbrance?
- 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?
- 51.89 What happens if there is a default on an encumbrance approved by the Director?
- 51.90 How does the concessioner get the Director’s approval before making an assignment or encumbrance?
- 51.91 What information may the Director require in the application?
- 51.92 What are standard proformas?
- 51.93 If the transaction includes more than one concession contract, how must required information be provided?
- 51.94 What information will the Director consider when deciding to approve a transaction?
- 51.95 Does the Director’s approval of an assignment or encumbrance include any representations of any nature?
- 51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?
- 51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

Subpart K—Information and Access to Information

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

36 CFR Ch. I (7–1–04 Edition)

Subpart L—The Effect of the 1998 Act’s Repeal of the 1965 Act

- 51.101 Did the 1998 Act repeal the 1965 Act?
- 51.102 What is the effect of the 1998 Act’s repeal of the 1965 Act’s preference in renewal?
- 51.103 Severability.

Subpart M—Information Collection

- 51.104 Have information collection procedures been followed?

AUTHORITY: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

SOURCE: 65 FR 20668, Apr. 17, 2000, unless otherwise noted.

Subpart A—Authority and Purpose

§ 51.1 What does this part cover?

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

National Park Service, Interior

§51.3

amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) relating to revenue-producing visitor services.

§51.2 What is the policy underlying concessions contracts?

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

Subpart B—General Definitions

§51.3 How are terms defined in this part?

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

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

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

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

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

A *concession contract (or contract)* means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions. Concession

contracts are not contracts within the meaning of 41 U.S.C. 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions. Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

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

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

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

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