

§ 51.44

36 CFR Ch. I (7-1-07 Edition)

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

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

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

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

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

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

[65 FR 20668, Apr. 17, 2000; 65 FR 54155, Sept. 7, 2000]

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

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