

terms of an existing concessions contract to provide new and additional services where the Secretary determines the services are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit. Such new and additional services shall not represent a material change to the required and authorized services as set forth in the applicable prospectus or contract.

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

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

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

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

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

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

(Pub. L. 113–287, §3, Dec. 19, 2014, 128 Stat. 3138; Pub. L. 114–289, title V, §502, Dec. 16, 2016, 130 Stat. 1490.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
101913	16 U.S.C. 5952 (less (7)(C)).	Pub. L. 105–391, title IV, §403 (less (7)(C)), Nov. 13, 1998, 112 Stat. 3504.

In paragraph (1), the words “entities seeking award of a concession contract” are substituted for “concessions contracts” for clarity.

In paragraph (2)(B)(i), the words “by electronic means” are substituted for “the Commerce Business Daily” to eliminate obsolete words. Federal Business Opportunities is the designated single point of universal electronic public access for publication of all procurement information and notices previously published in the Commerce Business Daily. See 66 Fed.

Reg. 27407, May 16, 2001, 68 Fed. Reg. 56678, October 1, 2003, 48 CFR ch. 1, subch. B, part 5, and the special notice posted in CBDNet on December 28, 2001, and printed on January 2, 2002.

In paragraph (5)(C), the words “concession contract” are substituted for “concession, contracts” to correct an error in the source provision.

In paragraph (8)(B)(ii)(III), the word “concession” is added for consistency in this subchapter.

Editorial Notes

AMENDMENTS

2016—Par. (9). Pub. L. 114–289 amended par. (9) generally. Prior to amendment, text read as follows: “The Secretary shall not grant a preferential right to a concessioner to provide new or additional services in a System unit.”

§ 101914. Term of concession contracts

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

(Pub. L. 113–287, §3, Dec. 19, 2014, 128 Stat. 3142.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
101914	16 U.S.C. 5953.	Pub. L. 105–391, title IV, §404, Nov. 13, 1998, 112 Stat. 3508; Pub. L. 106–176, title III, §311, Mar. 10, 2000, 114 Stat. 34.

§ 101915. Protection of concessioner investment

(a) **DEFINITIONS.**—In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

sion opportunity shall be resolicited with the leasehold surrender interest value as described in paragraph (5).

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

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

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

(2) EXISTING CONCESSIONER AWARDED A NEW CONTRACT.—A concessioner awarded a new concession contract to replace an existing concession contract after November 13, 1998, instead of directly receiving the possessory interest compensation, shall have a leasehold surrender interest in its existing possessory interest improvements under the terms of the new concession contract and shall carry over as the initial value of the leasehold surrender interest (instead of construction cost) an amount equal to the value of the existing possessory interest as of the termination date of the previous concession contract. In the event of a dispute between the concessioner and the Secretary as to the value of the possessory interest, the matter shall be resolved through binding arbitration.

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

(4) DE NOVO REVIEW OF VALUE DETERMINATION.—If the Secretary, or either party to a value determination proceeding conducted under a Service concession contract issued before November 13, 1998, considers that the value determination decision issued pursuant to the proceeding misinterprets or misapplies relevant contractual requirements or their underlying legal authority, the Secretary or either party may seek, within 180 days after the

date of the decision, de novo review of the value determination decision by the United States Court of Federal Claims. The Court of Federal Claims may make an order affirming, vacating, modifying or correcting the determination decision.

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

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

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3143.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
101915(a)	16 U.S.C. 5954(e).	Pub. L. 105–391, title IV, § 405(a) through (e), Nov. 13, 1998, 112 Stat. 3508.
101915(b)	16 U.S.C. 5954(a).	
101915(c)(1) through (3).	16 U.S.C. 5954(b).	
101915(c)(4)	16 U.S.C. 5954 note.	Pub. L. 110–161, div. F, title I (1st paragraph under heading “ADMINISTRATIVE PROVISIONS” under heading “NATIONAL PARK SERVICE”), Dec. 26, 2007, 121 Stat. 2107.
101915(d), (e).	16 U.S.C. 5954(c), (d).	

In subsection (b), before paragraph (1), the words “On and after November 13, 1998” are omitted as obsolete. In paragraph (6)(A), the words “Effective 9 years after November 13, 1998” are omitted as obsolete.

In subsection (c)(4), the words “For fiscal years 2008 and hereafter” are omitted as obsolete.

Editorial Notes

REFERENCES IN TEXT

The Act of October 9, 1965, known as the National Park Service Concessions Policy Act, referred to in subsec. (c)(1), is Pub. L. 89–249, Oct. 9, 1965, 79 Stat. 969, which enacted subchapter IV (§ 20 et seq.) of chapter 1 of Title 16, Conservation, and amended section 462 of Title 16, prior to being repealed by Pub. L. 105–391, title IV, § 415(a), Nov. 13, 1998, 112 Stat. 3515.

§ 101916. Reasonableness of rates and charges

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

(b) **APPROVAL BY SECRETARY REQUIRED.**—

(1) **FACTORS TO CONSIDER.**—A concessioner’s rates and charges to the public shall be sub-

ject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable. The Secretary shall approve rates and charges that the Secretary determines to be reasonable and appropriate. Unless otherwise provided in the concession contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant by the Secretary:

(A) Length of season.

(B) Peakloads.

(C) Average percentage of occupancy.

(D) Accessibility.

(E) Availability and costs of labor and materials.

(F) Type of patronage.

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

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

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3145.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
101916	16 U.S.C. 5955.	Pub. L. 105–391, title IV, § 406, Nov. 13, 1998, 112 Stat. 3510.

§ 101917. Franchise fees

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

(b) **PROVISIONS TO BE SPECIFIED IN CONTRACT.**—The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract shall be specified in the concession contract and may be modified only to reflect extraordinary unanticipated changes from the conditions anticipated