

jeopardizing the safety or security of people, places or vessels.

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.681 to read as follows:

#### § 117.681 Old Fort Bayou.

The draw of the bridge, mile 1.6 at Ocean Springs, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least eight hour notice is given; on Thanksgiving Day, Christmas Day and New Year's Day the draw shall open on

signal if at least 12 hour notice is given; and the draw need not open to vessels from 6:30 a.m. to 8 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. The draw shall open anytime at the direction of the District Commander.

Dated: May 4, 2020.

**John P. Nadeau,**

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 51

[NPS–WASO–29921; PPOBSADC0; PPMVSCS1Y.Y00000]

RIN 1024–AE57

#### Commercial Visitor Services; Concession Contracts

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service proposes to revise regulations that govern the solicitation, award, and administration of concession contracts to provide commercial visitor services at National Park Service units under the authority granted through the Concessions Management Improvement Act of 1998 and the National Park Service Centennial Act. The proposed changes would reduce administrative burdens and expand sustainable, high quality, and contemporary concessioner-provided visitor services in national parks.

**DATES:** The NPS will accept comments received or postmarked on or before September 18, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Standard Time on the closing date.

**ADDRESSES:** You may submit your comments, identified by Regulation Identifier Number (RIN) 1024–AE57, by any of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

[www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

(2) *By hard copy:* Mail to: Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Concession Contracts Revised Rule Comments, Washington DC 20240.

*Instructions:* Comments on the proposed rule will not be accepted by

fax, email, or in any way other than those specified above. All submissions received must include the words “National Park Service” or “NPS” and the RIN 1024–AE57. Comments received may be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. The NPS will not accept bulk comments in any format (hard copy or electronic) submitted on behalf of others.

*Docket:* For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov) and search for “1024–AE57”.

**FOR FURTHER INFORMATION CONTACT:** Kurt Rausch, Chief of Commercial Services Program, National Park Service; (202) 513–7202; [kurt\\_rausch@nps.gov](mailto:kurt_rausch@nps.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### Authority and Purpose

The National Park Service (NPS) enters into contracts with concessioners to provide commercial visitor services in over 100 units of the National Park System. Examples of such services include lodging, food, retail, marinas, transportation, and guided recreation. Each year, concession contracts generate approximately \$1.5 billion in gross revenues and return approximately \$135 million in franchise fees to the NPS. The National Park Service Concession Policies Act of 1965 (1965 Act), Public Law 89–249, provided the first statutory authority for the NPS to issue concession contracts. Since the repeal of the 1965 Act, concession contracts have been awarded under the Concessions Management Improvement Act of 1998 (1998 Act), 54 U.S.C. 101901–101926. A revision to the 1998 Act was also included in section 502 of the 2016 National Park Service Centennial Act (Pub. L. 114–289). NPS regulations in 36 CFR part 51 govern the solicitation and award of concession contracts issued under the 1998 Act and the administration of concession contracts issued under the 1965 and 1998 Acts. The NPS promulgated these regulations in April 2000 (65 FR 20630) and since that time has made only minor changes to them (see, e.g., 79 FR 58261).

In August of 2018, as part of the Department of the Interior's implementation of Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, and in response to a request for public input on how the Department of the Interior can improve implementation of regulatory reform initiatives by identifying regulations for modification (82 FR 28429), the NPS's external concessions partners provided

the Secretary of the Interior (Secretary) with suggestions for improving existing concession regulations. The Department of the Interior has considered the suggestions provided by the concessions partners, and some of those suggestions are reflected in this proposed rule. In addition, Secretarial Order 3366, *Increasing Recreational Opportunities on Lands and Waters Managed by the U.S. Department of the Interior*, signed by the Secretary in April of 2018, directed the NPS to look for ways to streamline and improve the contracting process for recreational concessioners, as part of the Department's efforts to expand access to and improve the infrastructure on public lands and waters, including through the use of public-private partnerships. The directives set forth in that Secretarial Order are intended to provide the public with more recreational opportunities and memorable experiences on the Department's public lands and waters. The proposed rule is responsive to these directives, suggestions received, and areas for improvement identified by the NPS.

Each of the proposed changes to 36 CFR part 51 are explained below and correspond to the subparts of the existing regulations that would change under this rule. In total, this rule proposes 12 changes to the existing regulations, which are numbered in the aggregate below to assist with public review and comment. Some of the changes will be implemented for new contracts while others will be effective for both current and new contracts as identified in the explanation for each change. The overall purpose of these changes is to update and improve the regulations governing concession contracts so that the public will be better served when visiting our nation's most cherished public lands and waters. The NPS welcomes public comment on this rule and hopes to receive meaningful input on these proposals.

*Subpart C—Solicitation, Selection, and Award Procedures (36 CFR 51.4–51.22).*

The regulations in Subpart C set forth the processes and rules governing the solicitation, selection, and award of concession contracts. The NPS proposes to make four changes to this subpart, as explained below.

*Proposed Change 1: New Concession Opportunities*

The NPS recognizes that the needs for commercial visitor services in parks may change over time, including the need to provide new services that are not currently provided. Recent examples include wireless connectivity

services at Lake Mead National Recreation Area, parking management at Muir Woods National Monument and bike rentals at Grand Canyon National Park. The NPS considers evolving visitor needs through its commercial services planning processes. Each unit of the national park system is required to have a formal statement of its core mission, titled the park foundation document, that provides basic guidance for all planning and management decisions and from which a park's planning portfolio is developed. The planning portfolio is the assemblage of individual plans, studies, and inventories which guide park decision-making. For commercial services, these may range from broader planning such as visitor use studies and commercial services strategies to more focused studies such as climbing or horse management plans. Commercial visitor services planning occurs further through the concession contract prospectus development process. During this process, the NPS reviews the current services being provided, conducts market studies and may solicit public comments to assess new commercial visitor service opportunities.

This planning framework is not recognized in the current concession regulations, and the regulations do not explicitly address that the NPS will consider evolving visitor needs that are not being addressed by existing concession contracts. In order to better recognize NPS planning to address evolving visitor needs, the proposed rule would add paragraphs (c) through (h) to § 51.4 in subpart C that would apply to new concession opportunities. Paragraph (c) would state that the Director will issue a prospectus for a new concession opportunity when the Director determines that a new concession opportunity is necessary and appropriate for public use and enjoyment of the unit and is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit. This standard for evaluating new opportunities is consistent with the 1998 Act. 54 U.S.C. 101912(b)(1)–(2). Paragraph (d) would require the NPS Director to establish procedures to solicit and consider suggestions from the public, including from potential concessioners, for new commercial services in NPS units. The procedures would not be specified in the regulations. Instead, they would be developed by the Director as a component of the existing NPS planning process. This would allow the processes to evolve over time as the NPS confronts

emerging and unanticipated visitor needs. Paragraph (e) would establish relevant factors that the Director would consider when evaluating a suggested concession opportunity. These factors would include whether the suggested concession opportunities are already being provided within the unit or nearby communities; the feasibility of the suggestions; the compatibility of the suggestions with governing law and policy; the innovative quality of the suggestions; and the potential impacts of the suggestions on visitation and on the economic wellbeing of local communities. Paragraph (f) would clarify that the NPS may not give preference to any party that suggests, or fails to suggest, an opportunity that is subsequently offered by the NPS; in other words, the fact that a party has submitted, or has failed to submit, such a suggestion will neither enhance nor diminish the party's chances of obtaining a contract. The 1998 Act recognizes only two categories of concession contracts that provide preferential rights to incumbent concessioners. 54 U.S.C. 101913(7)(A). Paragraph (g) would state that nothing in the new processes to be established by the Director would prevent the Director from amending an existing contract to allow a concessioner to provide new or additional services under 36 CFR 51.76, as discussed below. This preserves the authority of the Director to make adjustments to the services being provided in response to changing visitor needs over the term of the contract, consistent with the fundamental business opportunity that was offered in the concession prospectus.

*Proposed Change 2: Timing of Issuing Prospectuses*

Section 51.4(b) of the existing regulations states that the Director will not issue a prospectus for a concession contract earlier than 18 months prior to the expiration of a related existing concession contract. The original purpose of this restriction was to ensure that an existing concessioner would not have to compete for a new contract in circumstances where assessment of the feasibility of the terms and conditions of the new contract would be unduly speculative (65 FR 20637). The proposed rule would eliminate this restriction for new concession contract prospectuses. The NPS has found that the ability to provide lead-time to potential offerors of greater than 18 months may be helpful in circumstances where there are unusually significant commitments required of potential offerors to acquire personal property,

such as vessels, or to obtain financing or to manage reservations. This additional lead time opens the possibility of more offerors which benefits the NPS and the public because increased competition generally results in higher quality offers.

*Proposed Change 3: Publishing Notice of a Prospectus*

Section 51.8 of the existing regulations states that the Director will publish notice of the availability of a prospectus at least once in the *Commerce Business Daily* or in a similar publication if the *Commerce Business Daily* ceases to be published. The *Commerce Business Daily* is no longer published and available. As a result, the proposed rule would update this provision to instead require the Director to publish notice of the availability of a prospectus in the System for Award Management (SAM) where federal business opportunities are electronically posted for future concession prospectuses. The NPS also proposes to expand the description of the types of electronic media that will be used to advertise opportunities to include websites and social media. Publishing in the SAM and through websites and social media is consistent with the NPS's current practice and continued use of these sources will help ensure that interested parties are aware of solicitations, which could increase competition and result in higher quality offers.

*Proposed Change 4: Weighting Selection Factors*

The fourth proposed change is to § 51.16 of the existing regulations. Section 51.16 is closely related to § 51.17 of the existing regulations, which identifies selection factors that must be applied by the Director when assessing the merits of a proposal. Paragraph (a) of § 51.17 lists five primary selection factors:

1. The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area.
2. The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates.
3. The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract.
4. The financial capability of the offeror to carry out its proposal.

5. The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director.

The Director is required to consider these five factors under the 1998 Act. 54 U.S.C. 101913(5)(A). Paragraph (b) of § 51.17 lists one secondary selection factor and allows the Director to adopt additional secondary selection factors where appropriate and otherwise permitted by law. The enumerated secondary factor is the quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. This factor can be excluded for small contracts and those expected to have limited impacts on park resources. Secondary factors are permitted, but not required to be considered under the 1998 Act. 54 U.S.C. 101913(5)(B).

The 1998 Act is silent on how the Director should weigh each factor. This question is answered by the regulations in § 51.16, which requires the Director to assign a score for each selection factor that reflects the merits of the proposal compared to other proposals received, if any. Under the existing regulations, the first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in paragraph (b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

The NPS proposes to revise the rules found in section 51.16 for how the Director may score each selection factor. Rather than setting the maximum scores for each selection factor in the regulations, the proposed rule would allow the NPS to determine the maximum score of each selection factor in the prospectus, subject to the following criteria:

1. The maximum score assignable for the fifth selection factor (the amount of the franchise fee and other forms of financial consideration to the NPS) would not be higher than the maximum score for any of the other principal selection factors. This limitation complies with a requirement in the 1998

Act that the consideration of revenue to the United States shall be subordinate to the objectives of protecting, conserving, and preserving resources of the System unit and of providing necessary and appropriate facilities to the public at reasonable rates (54 U.S.C. 101913(5)(A)(iv)).

2. The maximum score for the enumerated secondary factor in § 51.17(b)(1) (furthering the protection, conservation and preservation of park area and other resources through environmental management programs and activities) would not be higher than the maximum score for any principal selection factor.

3. The maximum scores for any additional secondary selection factors would be such that the maximum aggregate score assignable for all additional secondary selection factors will not be higher than the maximum score for any primary selection factor. Limiting the maximum scores assigned to secondary selection factors in this manner acknowledges that they should be subordinate to the primary selection factors that Congress felt were important enough to articulate in the 1998 Act.

The proposed revisions to § 51.16 would be for all future prospectuses. The revisions would provide the NPS with greater flexibility to weigh the factors according to how important they are to the NPS and for the specific contract. For example, under the existing regulations, the Director must assign the offeror that best satisfies selection factor one (resource protection) up to five points. This can account for approximately 20% of the total maximum score. Because of the NPS practice to include specific requirements in the contracts and its exhibits (primarily the operating and maintenance plans), frequently there is little room for offerors to provide substantive proposals on how to exceed those baseline requirements. Reducing the available points for this selection factor and instead offering more points for creative ideas for visitor services would provide the NPS with flexibility to clearly illustrate its priorities, which in turn would provide information to interested parties on how to present their ideas. For some services resource protection may not be as important compared to other selection factors, such as primary selection factor three (experience and background). For example, when a concession operation occurs wholly within a park visitor center, the concessioner has little, if any ability to manage its operation to protect park resources. Under the proposed rule, the Director could set the maximum score for factor one (resource

protection) at three points and the maximum score for factor three (experience and background) at eight points to reflect the relative importance of those factors. In contrast, protecting resources is a significant concern for marinas with boat fueling services. In this scenario, the proposed rule would allow the NPS to set the maximum score of primary selection factor one (resource protection) higher than the other selection factors. Allowing the Director to adjust the maximum scores for each selection factor depending upon the offered services would also help offerors prepare proposals that focus on the relative importance of each factor. This should result in the selection of the best offeror and better services for visitors.

*Subpart G—Leasehold Surrender Interest (36 CFR 51.51–51.67).*

The regulations in Subpart G explain how a concessioner can obtain leasehold surrender interest (LSI) in capital improvements to visitor service facilities that are made under the terms of a concession contract. The NPS proposes to make one change to this subpart, as explained below. This change would apply to future concession contracts.

The NPS manages concession contracts to ensure concessioners maintain and repair the facilities assigned as required under the terms of their contract. The NPS also seeks to encourage concessioners to make capital improvements in order to ensure facilities are structurally sound, updated, and adequate to meet the needs of the visiting public. When the NPS requires the concessioner to fund and construct capital improvements to expand, update, and rehabilitate facilities, the concessioner receives LSI in each capital improvement as compensation for the associated costs. The NPS considers the costs associated with these improvements, as well as the opportunity for receiving LSI, when it determines the concessioner's reasonable opportunity for net profit and the minimum franchise fee for the contract. The 1998 Act outlines, in general terms, what constitutes a capital improvement eligible for LSI and how LSI should be valued (54 U.S.C. 101915). Details about which types of construction activities are eligible for LSI and how it is valued are found in subpart G.

LSI is unique to NPS concession contracts and is not used in the private sector. In the private sector, an owner may realize a return on its investment for capital improvements when it sells an improved property, if the value has appreciated. The owner may lose money

if it sells an improved property that has declined in value. In contrast, under concession contracts with the NPS, the concessioner invests in facilities they do not own. As a result, the concessioner cannot receive a return on the investment through a sale of the property. LSI provides them that opportunity in the form of a guaranteed return to the concessioner on its investment.

Although the NPS seeks to encourage concessioners to make capital investments, it must balance the benefits of such investments with the need to address the LSI generated from such investments. If the incumbent concessioner wins the new contract, the LSI is retained by the concessioner and continues through the term of the next contract. If there is a new concessioner, the LSI is often transferred to a new concessioner, but the new concessioner must compensate the outgoing concessioner for the value of the LSI. This can create a significant investment hurdle that limits competition on the contract. A higher initial investment can lead to reduced competition because fewer entities have access to the large buy-in amounts for certain contracts or because the return on their investment does not make sense for these entities in comparison to other opportunities. When there is the likelihood of less competition, the incumbent may also not be incentivized to offer as many new practices or benefits when providing the services required. This can adversely impact the visitor experience. If, instead, the NPS pays the value of the LSI to the outgoing concessioner, then the funds expended are unavailable to support other NPS needs, such as prospectus development or managing the new concessioner during the term of the contract and improving visitor operations and facilities.

*Proposed Change 5: Definition of Major Rehabilitation*

Section 51.51 of the existing regulations contains definitions of special terms that are used in Subpart G to explain how LSI works. One of those terms is "major rehabilitation," which means, under the existing regulations, a planned, comprehensive rehabilitation of an existing structure that:

(1) 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); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

The meaning of this term is important for several reasons. Under § 51.64, a concessioner that undertakes a major rehabilitation to an existing structure in which the concessioner has LSI, will increase its LSI in the structure by the construction cost of the major rehabilitation. Under § 51.66, if a contract requires a concessioner to undertake a major rehabilitation of a structure in which there is no LSI, upon completion of the major rehabilitation the concessioner will obtain LSI in the structure for the amount of the construction costs.

The NPS proposes two changes to the definition of "major rehabilitation" in order to simplify and broaden what qualifies as a major rehabilitation with the intent of encouraging capital investment by concessioners. These changes would apply for future concession contracts.

First, the NPS proposes to eliminate the requirement that, unless special circumstances exist, the Director must determine the rehabilitation project is completed within 18 months from the start of the rehabilitation work. Projects must be approved by the Director and any approval would include a project schedule. Eighteen months is a timeframe typical for such projects. In practice, however, the Director approves the timeline for major rehabilitation projects based on the complexity and scope of the project. The result is that the 18-month requirement in the existing regulation has been rendered superfluous and does not provide any benefit to the public. Removing this requirement would simplify and clarify the definition to match existing practice.

Second, the NPS proposes to decrease the construction cost threshold for what constitutes major rehabilitation from 50% of the pre-rehabilitation value to 30% of the pre-rehabilitation value. This would allow more construction projects to qualify for increased LSI under § 51.64 or new LSI under § 51.66.

The NPS selected the 30% threshold through industry research. The International Facility Management Association identifies 30% as the threshold for when a rehabilitation is "critical" to the structure (see <https://community.ifma.org/fmpedia/w/fmpedia/2459>). The NPS proposes the 30% threshold because it better aligns with this industry standard than does the 50% threshold in the existing definition. Further, the NPS believes that broadening the opportunities under which LSI may be obtained would facilitate important and needed capital improvement projects. This would improve the conditions of facilities and

help ensure a safe and enjoyable experience for park visitors.

While the 1998 Act intended to promote private investment in concession structures by providing LSI to concessioners, the 50% threshold contained in the existing regulations limits concessioners' opportunities to make investments of the type envisioned by Congress. Concerns have been raised that the current regulations actually discourage investment in concessions structures. The NPS seeks to improve the regulations to encourage concessioners to invest in capital improvements. The NPS seeks comment from the public on other ways it can incentivize concessioners to make capital investments that improve the quality of facilities for the public.

Broadening the scope of projects encouraged by the availability of LSI would have other consequences to the concession contract and its management. For example, the utilization of LSI for more rehabilitation projects allows for the recovery of investment by the concessioner, lowering the risk of that investment to competitive levels. This lower risk will be considered in the NPS analysis of the opportunity and may result in a higher minimum franchise fee set in the contract consistent with the statutory requirements to set a fee appropriate to the probable value of the contract and thus result in a higher franchise fees paid to the government. Franchise fee revenue may also increase if increased concessioner investment results in increased visitor demand for NPS concessions. The NPS could use the new fee revenue for other NPS needs or when appropriate to buy down LSI incurred on the contract as a result of the concessioner investment. This assumes that revenue projections for the contract are realized and adequate franchise fees are available, since franchise fees are calculated as a function of revenue. The use of franchise fees for this purpose means they are not available for other NPS needs. An analysis of the expected relationship between LSI and franchise fees as a result of this proposed change can be found in the report entitled "36 CFR 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)" that can be accessed at [www.regulations.gov](http://www.regulations.gov) by searching for "1024-AE57".

The proposed changes to the definition of "major rehabilitation" do not remove the requirement that the Director must approve in advance any major rehabilitation project. Although the changes to the definition will likely

increase the opportunities for concessioners to seek approval for major rehabilitation projects, the NPS retains the discretion to determine that using that source of capital is not in the best interests of the public. The NPS considers many factors when deciding whether to approve a capital investment. For example, the NPS may decide that the value of LSI that would result from the capital improvement would decrease competition for future contracts, outweighing the benefit of the improvement. As a result, the availability of LSI may not generate the desired outcome of increased investment in all cases. However, in these cases the NPS may pay for the capital improvements itself to avoid generating imprudent levels of LSI. The NPS would need to evaluate the benefits of the investment against the opportunity costs of diverting funds from other projects, and how that would impact the quality of other concession facilities and visitor services.

#### *Subpart I—Concession Contract Provisions (36 CFR 51.73–51.83).*

The regulations in subpart I govern key provisions in concession contracts. The NPS proposes to make six changes to this subpart, as explained below.

#### *Proposed Change 6: Term of Concession Contracts*

Section 51.73 of the existing regulations governs the terms of concession contracts. Consistent with the 1998 Act (54 U.S.C. 101914), the existing regulation says that contracts may not exceed 20 years in length and will generally be awarded for ten years or less, unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. The regulations also say that it is the policy of the Director that the terms should be as short as prudent, taking into account financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate.

The NPS proposes to make several changes to this section for the purpose of clarifying that it may issue contracts for shorter or longer than ten years, never to exceed 20 years, depending upon the particular circumstances of the contract. The rule would state that the Director, when circumstances warrant, may award contracts for longer than 10 years. The stated preference for terms to be "as short as is prudent," which is not found in the statute, would be removed. In practice, the NPS has found that a ten-year term or longer is often in the

best interest of the public because it helps ensure a reasonable opportunity for return on investment for offerors thereby generating more interest in the opportunity when a shorter term might make the opportunity commercially unviable.

The NPS also proposes to revise § 51.73 to allow the Director to include contract provisions allowing for an optional term or terms of one year or more, provided that the total term of the contract, including all optional terms, does not exceed 20 years. Optional terms may be exercised when the concessioner has received favorable annual ratings during the term of the contract and has met other performance criteria defined in the contract, such as increasing occupancy or improving other aspects of the service. The availability of optional contract terms could incentivize the concessioner to focus on high performance under the contract. This new provision would also recognize that optional terms may be exercised when there has been a substantial interruption of or change to operations due to natural events or other reasons outside the control of the concessioner. These could include, for example, cessation of operations due to forest fires, hurricane damage or administrative closures ordered by the government. This would allow concessioners to receive the term that the NPS and concessioner both anticipated during the solicitation process and upon execution of the contract. This change would apply to current concession contracts if the contract was amended as well as future contracts. The NPS expects that this assurance would increase competition for contracts and avoid situations where concessioners reduce services, facility management or other aspects of their contracted requirements to cover lost revenue. In all cases, the Director would determine whether the criteria for exercising an option year or years have been met.

#### *Proposed Change 7: New or Additional Services*

Section 51.76 of the existing regulations states that the Director may not grant a concessioner a preferential right (e.g., a right of first refusal) to provide new or additional visitor services beyond those already provided by the concessioner under the terms of a concession contract. This statutory basis for this prohibition is found in the 1998 Act, 54 U.S.C. 101913(9). Section 51.76, however, does allow the Director to amend a concession contract to authorize the concessioner to provide minor additional services that are a

reasonable extension of the existing services.

The NPS Centennial Act revised 54 U.S.C. 101913(9) concerning the authority to amend an existing contract to provide new and additional services, allowing the NPS to do so if the new and additional services do not represent a material change to the required and authorized services under the contract. The NPS proposes to change Section 51.76 to align the language in the regulation with that in the Centennial Act. This broader language may provide new opportunities to enhance commercial services under existing contracts allowing concessioners to meet changing visitor needs where appropriate. This change would apply to current and future concession contracts. Before the Director authorizes such new or additional services under a contract, the proposed rule would continue to require the Director to determine that the services are necessary and appropriate for public use and enjoyment of the NPS unit where they will be provided and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of that unit in accordance with the Centennial Act and the 1998 Act. 54 U.S.C. 101912(b) and 10913(9).

#### *Proposed Change 8: Setting Franchise Fees*

Paragraph (a) of § 51.78 of the existing regulations requires that concession contracts provide for payment to the government of a franchise fee in consideration of the probable value to the concessioner of the privileges granted by the contract. The regulations provide guidance on how probable value will be determined. As required by the 1998 Act (54 U.S.C. 101913(5)(A)(iv)), the regulations state that consideration of revenue to the United States will be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

The NPS proposes to add new language to paragraph (a) explaining in more detail how the Director will set the minimum acceptable franchise fee in the prospectus. The proposed rule would state that the minimum franchise fee will be set at a level that the Director determines will encourage competition among offerors and in a manner so that concessioners can provide the necessary and appropriate visitor services to the public. While Congress has charged the NPS with ensuring that the franchise fee reflects “the probable value to the concessioner of the privileges granted

by the particular contract involved,” 54 U.S.C. 101917(a), the NPS has long implemented this directive by setting a minimum acceptable franchise fee in the contract prospectus and allowing the market to determine whether a higher franchise fee better reflects the contract’s probable value to the concessioner. The proposed revision to the regulation emphasizes this appropriate role that competition between potential concessioners plays in fulfilling the statutory mandate. The proposed rule would also require the Director to use data, including data from the hospitality industry for similar operations, when determining the minimum franchise fee and to provide the basis for this determination in the prospectus. These proposed additions to the regulation are consistent with current NPS practice in prospectus development which already provides the basis for the minimum franchise fee but the addition to the regulation would further this transparency in the published prospectuses. The NPS already uses industry data to complete a financial analysis to set the minimum franchise fee that considers the probable value to the concessioner based upon a reasonable opportunity for net profit in relation to capital invested, obligations and privileges of the contract. The NPS also uses a competitive selection process and sets a minimum franchise fee which may be bid up by offerors. The proposed changes would state this explicitly in the regulations so that the public can better understand how the Director sets minimum franchise fees. These changes apply to all future prospectuses for concession contracts although, as noted, the changes are already consistent with NPS current practices.

#### *Proposed Change 9: Special Accounts*

Paragraph (b) of § 51.81 of the existing regulations allows concession contracts to require the concessioner to set aside a percentage of its gross receipts in a repair and maintenance reserve to be used, at the direction of the Director, solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct improvements that would be eligible for LSI. Paragraph (a) requires that construction of capital improvements must be undertaken pursuant to regulations and contract provisions regarding LSI.

The NPS proposes to revise paragraph (b) by replacing the term “repair and maintenance reserve” with the term “component renewal reserve.” The

purpose of this change is to reduce confusion about how the funds in this reserve may be used. This change would apply to current concession contracts if the contract was amended as well as future contracts. The NPS seeks to clarify that this reserve is not intended to be used for routine maintenance and repair activities. The component renewal reserve (CRR) may be used to fund projects to replace systems and components that have reached the end of their design life, are non-recurring within a seven-year time frame and are not part of an LSI-eligible capital improvement project (*i.e.*, new construction or major rehabilitations). Examples of components are roofs and sprinkler systems. The CRR may not be used for routine maintenance (*e.g.*, painting) and repairs (*e.g.*, heating system parts replacement) or grounds keeping.

The NPS determines the amount of the CRR by estimating the anticipated component renewal needs for facilities during the term of the contract. The expected cost to meet those needs is amortized over the term of the contract and then specified in the contract to be set aside by the concessioner as a percentage of revenue. This reserve percentage is deducted from the franchise fee that would otherwise be paid to the government. The reserve is meant to cover those replacements that do not qualify for LSI so that there is no overlap between CRR and LSI projects. Because the contracts require the component renewal reserve to be set aside, the funds in the reserve cannot be received by the concessioner as profit and therefore must be used to renew components of facilities. To encourage utilization of these replacement reserves, in more recent contracts, reserves are required to be set aside, not available for profit and remaining unobligated balances are paid to the NPS as franchise fees at the end of the contract.

The NPS seeks comment from the public on other ways it can incentivize concessioners to complete component renewal activities that are practical and compliant with legal requirements. For example, the NPS seeks comment on whether concession contracts could contain provisions that allow the concessioner to deduct from its periodic franchise fee payments, amounts that were expended by the concessioner during the preceding period for component renewal activities.

#### *Proposed Change 10: Concessioner Rates*

Paragraph (a) of § 51.82 of the existing regulations states that concession

contracts must allow concessioners to set reasonable rates and charges to the public for visitor services, subject to approval by the Director. Paragraph (b) explains how the Director will determine whether rates and charges are reasonable, by comparison with rates and charges for facilities and services of comparable character under similar conditions with due consideration to the following factors: Length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and types of patronage. Rates and charges may not exceed market rates and charges for comparable facilities, goods, and services, after considering certain factors. These requirements are taken directly from the 1998 Act, 54 U.S.C. 101916.

The 1998 Act also states that the rate approval process must be as prompt and as unburdensome to the concessioner as possible and rely on market forces to establish the reasonableness of rates and charges to the maximum extent practicable. 54 U.S.C. 101916(b)(1). The NPS proposes several changes to § 51.82 to meet these requirements. These changes would apply to current and future concession contracts.

First, the NPS proposes to use the language in the 1998 Act and state clearly in the regulations that the Director will approve rates and charges that are reasonable and appropriate in a manner that is as prompt and as unburdensome as possible and that relies on market forces to establish the reasonableness of such rates and charges to the maximum extent practicable.

Second, the NPS would add a new paragraph (c) that would require the Director to identify the rate approval method for each category of facilities, goods, and services in the prospectus. If the Director determines that market forces are sufficient to establish the reasonableness of rates and charges, the rule would require the Director to make a competitive market declaration (rather than using other NPS annual rate approval methods), and rates and charges would be approved based upon what the concessioner determines the market will bear. The Director would determine this by reviewing the services being provided by the current concessioner relative to the comparable set of offerings in the market. The Director may make a competitive market declaration when the Director determines, based upon this review, that there are an adequate number of alternatives in the same market as the concessioner that are offering similar services, such that visitors may choose to use those alternative services rather

than those of the concessioner based upon rate differences. Other rate approval methods would be used only when the Director determines that market forces are inadequate to establish the reasonableness of rates and charges for the facilities, goods, or services. For example, this may occur for overnight stays at iconic lodges, food and beverage outlets where there are no easily accessible alternatives, guiding services for one-of-a-kind recreational experiences and transportation to NPS units where there is only one way to access the site (e.g. ferry service to the Statue of Liberty). The rule would require the Director to monitor rates and charges and competition and would allow the Director to change the rate approval method during the term of the contract to reflect changes in market conditions. This last provision would allow the NPS to respond to market pressures on rates for concessioner services that did not historically exist. This has occurred where lodging and other visitor services have expanded in gateway communities, aided by online searches and booking methods that provide more options for visitors. In addition, competitors in some locations use dynamic pricing to set rates, which means that prices are adjusted to reflect demand. The task of approving reasonable and appropriate rates and charges in these scenarios is burdensome. Unlike private sector companies, concessioners must undergo an annual rate approval process each year where maximum rates are set through a complex comparability process that occurs months in advance of the season. The concessioners are then not as able to quickly and efficiently adjust rates, particularly in times when visitor demand is higher than was forecasted. The proposed changes acknowledge this fact and would allow the NPS to more fully consider competitive, demand-driven pricing methods where it makes sense to lessen this burden. The NPS monitors the rates of the concessioner. In the event that the concessioner's rates set based upon a competitive market declaration no longer reflect those of the competitors, the Director may determine that this rate approval method is not acting to provide reasonable and appropriate rates and may change the rate approval method to one that offers greater assurance that these conditions will be met.

The enhanced use of competitive market methods may result in increased rates and revenue with no change in expenses to the concessioner. These changes in the financial opportunity of

the contract will be accounted for through contract requirements that would benefit the public using the concession services. An analysis of the expected relationship between rates and such contract changes can be found by reading the report entitled "36 CFR 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)" that can be accessed at [www.regulations.gov](http://www.regulations.gov) by searching for "1024-AE57". The NPS notes that the competitive market declaration and other rate methods establish reasonable and appropriate rates for the services that are being offered. This is separate than the determination of what services are necessary and appropriate, including the range of offerings and associated price points. That determination is conducted through the NPS planning process.

Third, the NPS would add a new paragraph (d) that would establish rules for how the Director responds to requests from existing concessioners to change rates and charges to the public. The new language would require the Director to issue a response to a request by a concessioner to change rates or charges within 30 days of receiving a complete and timely request under the terms of the contract when possible. The NPS currently responds within 45 days as a matter of policy so this would accelerate the process and provide more certainty to concessioners. The rule would require the Director to explain in writing any finding that the requested changes are not adequately justified under the circumstances. This provision would ensure that the Director provides prompt and transparent decisions to the concessioner regarding rates and charges.

#### *Subpart J—Assignment or Encumbrance of Concession Contracts (36 CFR 51.84–51.97)*

The regulations in Subpart J set forth rules for executing assignments and encumbrances of concession contracts. The NPS proposes to make one change to this subpart, as explained below.

#### *Proposed Change 11: Timing of Assigning Contracts*

Section 51.87 of the existing regulations states that approvals of assignments or encumbrances of concession contracts are subject to several determinations by the Director.

The NPS proposes to add a new requirement that the request for approval of the assignment must be received 24 months or more after the effective date of the contract unless the requested assignment is compelled by

circumstances beyond the control of the concessioner. This would prevent concessioners with a preferential right of renewal from using that right to win a contract with the intention of then promptly assigning the contract to a new operator that did not compete for the contract. This change would apply to current concession contracts that are amended after the effective date of this rule as well as to future contracts.

#### **Compliance With Other Laws, Executive Orders, and Department Policy Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that agencies must base regulations on the best available science and the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

#### **Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)**

The proposed rule is likely to affect a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*); however, the NPS lacks the ability to quantify the potential size of this impact. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared pursuant to the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA). The NPS concludes that the potential impact on small concessioners is likely to be positive. The NPS estimates that the majority (96%) of the entities that have concession contracts are small businesses and that this makeup is likely to be similar in the future. Furthermore, the NPS conducted a qualitative analysis to determine the likely impacts of the rule on concessioners that focused on key

changes to the rule related to LSI, rates and franchise fees. While the NPS lacks the ability to quantify the impact, the NPS found that the impacts are likely to be beneficial to concessioners in general, without any particular bias toward small or large businesses. Since the majority of contracts are held by small businesses, the NPS concluded that the impacts to small businesses would be therefore be positive. The analysis is available in the report entitled "36 CFR 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)" that can be accessed at [www.regulations.gov](http://www.regulations.gov) by searching for "1024-AE57", specifically Chapter 5 of that report.

#### **Unfunded Mandates Reform Act (UMRA)**

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule clarifies NPS procedures and does not impose requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

#### **Takings (Executive Order 12630)**

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

#### **Federalism (Executive Order 13132)**

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

#### **Civil Justice Reform (Executive Order 12988)**

This rule complies with the requirements of Executive Order 12988. This rule:

- (a) Meets the criteria of section 3(a) requiring agencies to review all regulations to eliminate errors and ambiguity and write them to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring agencies to write all regulations in clear language and contain clear legal standards.

#### **Consultation With Indian Tribes (Executive Order 13175 and Department Policy)**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and has determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

#### **Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*)**

This proposed rule contains no new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

#### **National Environmental Policy Act (NEPA)**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The NPS has determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, financial, legal, and technical in nature. In addition, the environmental effects of this rule are too speculative to lend themselves to meaningful analysis. NPS decisions to enter into concession contracts will be subject to compliance with NEPA at the time the contracts are executed. The NPS has determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### **Effects on the Energy Supply (Executive Order 13211)**

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### **Clarity of This Rule**

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)) and by the Presidential Memorandum of June 1, 1998, to write all rules in plain

language. This means that each rule the NPS publishes must:

- (a) Have logical organization;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Have short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that the NPS has not met these requirements, send comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the rule, your comments should specifically identify where the NPS could improve. For example, you should tell the NPS the numbers of the sections or paragraphs you find unclear, which sections or sentences are too long, the sections where you would find lists or tables useful, etc.

#### List of Subjects in 36 CFR Part 51

Commercial services, Government contracts, National parks, Visitor services.

In consideration of the foregoing, the National Park Service proposes to revise 36 CFR part 51 as follows:

### PART 51—CONCESSION CONTRACTS

- 1. The authority citation for part 51 is revised to read as follows:

**Authority:** 54 U.S.C. 101901–101926 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

- 2. Amend § 51.4 by revising the section heading and paragraph (b) and adding paragraphs (c) through (h) to read as follows:

**§ 51.4 How will the Director invite the general public to apply for the award of a concession contract and how will the Director determine when to issue a prospectus for a new concession opportunity where no prior concession services had been provided?**

\* \* \* \* \*

(b) Except as provided under § 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded.

(c) The Director will issue a prospectus for a new concession opportunity when the Director determines, in the Director's discretion, that a new concession opportunity in a

System unit is necessary and appropriate for public use and enjoyment of the System unit and is consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit.

(d) The Director will establish procedures to solicit and consider suggestions for new concession opportunities within units of the National Park System from the public (including from potential concessioners) as part of the System's planning processes for such opportunities.

(e) In determining whether suggested concession opportunities are necessary and appropriate and whether to issue a prospectus for a concession contract to provide such opportunities, the Director will consider factors including whether the suggested concession opportunities are already being adequately provided within the System unit or the communities located near the System unit; the feasibility of the suggestions; the compatibility of the suggestions with governing law and policy; the innovative quality of the suggestions; and the potential impacts of the suggestions on visitation and on the economic wellbeing of communities located near System units.

(f) No preference to a concession contract shall be granted to a party based on that party's having submitted, or failed to submit, a suggestion described in this section.

(g) The Director may consider suggestions for new services as additional services to be provided through an existing concession contract as described in § 51.76.

(h) Nothing in this section shall constrain the discretion of the Director to solicit or consider suggestions for new concession opportunities or collect other information that can be used by the Director in connection with a new concession opportunity.

- 3. Revise § 51.8 to read as follows:

#### **§ 51.8 Where will the Director publish the notice of availability of the prospectus?**

The Director will publish notice of the availability of the prospectus at least once in the System for Award Management (SAM) system where federal business opportunities are electronically posted, or in a similar publication if these sites cease to be used. The Director may also publish notices, if determined appropriate by the Director, electronically on websites including social media and in local or national newspapers or trade magazines.

- 4. Amend § 51.16 by revising paragraph (a) to read as follows:

#### **§ 51.16 How will the Director evaluate proposals and select the best one?**

(a) The Director will apply the selection factors set forth in § 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. Each selection factor will be scored along a scale assigned to that selection factor in the prospectus, subject to the following criteria:

(1) The maximum score assignable for the fifth selection factor will not be higher than the maximum score for any of the other principal selection factors, with a score of one for agreeing to the minimum acceptable franchise fee contained in the prospectus;

(2) The maximum score assignable for the secondary factor set forth in § 51.17(b)(1) will not be higher than the maximum score for any principal selection factor; and,

(3) The maximum scores assignable for any additional secondary selection factors set forth in the prospectus will be such that the maximum aggregate score assignable for all additional secondary selection factors will not be higher than the maximum score for any primary selection factor.

\* \* \* \* \*

- 5. Amend § 51.51 by revising the definition of the term "Major rehabilitation" to read as follows:

#### **§ 51.51 What special terms must I know to understand leasehold surrender interest?**

\* \* \* \* \*

*Major rehabilitation* means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance; and

(2) The construction cost of which exceeds thirty percent of the pre-rehabilitation value of the structure.

\* \* \* \* \*

- 6. Revise § 51.73 to read as follows:

#### **§ 51.73 What is the term of a concession contract?**

(a) A concession contract will generally be awarded for a term of 10 years or less and may not have a term of more than 20 years (unless extended in accordance with this part). The Director will issue a contract with a term longer than 10 years when the Director determines that the contract terms and conditions, including but not limited to the required construction of capital improvements or other potential

investments related to providing both required and authorized services, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should take into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate.

(b) The Director may include in a concession contract an optional term or terms, in increments of at least one year, where the total term of the contract, including all optional terms, does not exceed 20 years. Such a contract shall provide that an optional term may be exercised by the concessioner if the Director determines that:

(1) The concessioner has received favorable annual ratings for every year during the term of the contract to date, as defined in the contract, and has met the performance criteria defined in the contract for the exercise of an optional term; or,

(2) There has been a substantial interruption of or change to operations due to natural events or other reasons outside the control of the concessioner, including but not limited to government-ordered interruptions, and the exercise of an optional term is warranted in light of the interruption or change to operations.

■ 7. Revise § 51.76 to read as follows:

**§ 51.76 May the Director amend a concession contract to provide new or additional visitor services or grant a concessioner a preferential right to provide new or additional visitor services?**

(a) The Director may propose to amend the applicable terms of an existing concession contract to provide new and additional services where the Director determines the services are necessary and appropriate for public use and enjoyment of the unit of the National Park System unit 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.

(b) Except as provided above or in subpart E of this part, the Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services beyond those already provided by the concessioner under the terms of a concession contract.

(c) A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

■ 8. Amend § 51.78 by revising paragraph (a) to read as follows:

**§ 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?**

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. The Director shall set the minimum acceptable franchise fee in the prospectus at a level which the Director determines will encourage participation in the competition and so that concessioners can provide necessary and appropriate visitor services to the public, consistent with the foregoing requirements. In determining the minimum acceptable franchise fee, the Director shall use data including relevant general hospitality industry data for similar operations to determine the minimum acceptable franchise fee and provide a basis for the assessment of the minimum acceptable franchise fee in the prospectus. 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 visitor services at reasonable rates.

\* \* \* \* \*

■ 9. Amend § 51.81 by revising paragraph (b) to read as follows:

**§ 51.81 May the Director include "special account" provisions in concession contracts?**

\* \* \* \* \*

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a component renewal reserve to be used at the direction of the Director solely for renewal of real property components located in park areas and utilized by the concessioner in its operations.

Component renewal reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Component renewal reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from these reserves will be expended only for the renewal of real property components assigned to the concessioner by the Director for use in its operations.

\* \* \* \* \*

■ 10. Amend § 51.82 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

**§ 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?**

\* \* \* \* \*

(b) The Director shall approve rates and charges that are reasonable and appropriate in a manner that is as prompt and as least burdensome to the concessioner as possible and that relies on market forces to establish the reasonableness of such rates and charges to the maximum extent practicable. Unless otherwise provided in the concession contract, the reasonableness and appropriateness of rates and changes shall be determined primarily by comparison with those rates and changes 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 Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and cost of labor; and types of patronage.

(c) The Director shall identify the rate approval method to be used for each category of facilities, goods, and services to be provided when preparing the prospectus for a concession contract. The Director will use the least burdensome and most market-based method that is appropriate. Whenever the Director determines that market forces are sufficient to ensure reasonable and appropriate rates, the Director will make a competitive market declaration, and rates and charges will be approved based upon what the concessioner determines the market will bear. Other rate approval methods will be used only when the Director determines that market forces are inadequate to establish the reasonableness of rates and charges for the facilities, goods, or services. The Director will monitor rates and charges and competition and may change the rate approval method during the term of the contract to reflect changes in market conditions.

(d) The Director shall issue a response to a request by a concessioner to change rates and charges to the public within 30 days of receipt of a complete and timely request in accordance with the conditions described in the contract when possible. If the Director does not approve of the rates and charges proposed by the concessioner, the Director must provide in writing the basis for any disapproval at the time of the response by the Director.

■ 11. Amend § 51.87 by adding paragraph (i) to read as follows:

**§ 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?**

\* \* \* \* \*

(i) That a concession contract may not be assigned within twenty-four months following the effective date of the contract, unless the proposed assignment is compelled by circumstances beyond the control of the assigning concessioner.

**George Wallace,**  
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020-15650 Filed 7-16-20; 8:45 am]

**BILLING CODE 4312-51-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2019-0498; FRL-10011-38-Region 9]

**Air Quality Implementation Plan; California; Calaveras County Air Pollution Control District and Mariposa County Air Pollution Control District; Stationary Source Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Calaveras County Air Pollution Control District (CCAPCD) and the Mariposa County Air Pollution Control District (MCAPCD) portions of the California State Implementation Plan (SIP). In this action, we are proposing to approve two rules, one submitted by the CCAPCD and the other by the MCAPCD, governing the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or “the Act”). We are taking comments on this proposal and a final action will follow.

**DATES:** Written comments must be received on or before August 19, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0498 at <https://www.regulations.gov>, or via email to [R9AirPermits@epa.gov](mailto:R9AirPermits@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web,

cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Maggie Waldon or Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3987 or (415) 947-4174, or by email at [waldon.margaret@epa.gov](mailto:waldon.margaret@epa.gov) or [batchelder.amber@epa.gov](mailto:batchelder.amber@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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**I. The State's Submittal**

*A. What rules did the State submit?*

Table 1 lists the rules addressed by this proposal including the dates they were adopted by each District and submitted to the EPA by the California Air Resources Board (CARB or “the State”).

**TABLE 1—SUBMITTED RULES**

District	Rule or regulation No.	Rule title	Adopted	Submitted <sup>1</sup>
Calaveras County APCD ..	Rule 428 .....	NSR Requirements for New and Modified Major Sources in Nonattainment Areas.	03/12/19	04/05/19
Mariposa County APCD ....	Regulation XI .....	NSR Requirements for New and Modified Major Sources in the Mariposa County Air Pollution Control District.	03/12/19	04/05/19

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D

of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). The rules listed in Table 1 contain the relevant District's NNSR permit program applicable to new and modified major sources located

in areas designated nonattainment for any ozoneNAAQS.

The EPA issued final rules on February 3, 2017, and December 11, 2017, that found (among other things) that the CCAPCD and the MCAPCD had

<sup>1</sup> Each submittal was transmitted to the EPA via a letter from CARB dated April 3, 2019.