

(2) an assessment of any problems with the management and administration of the concession program that are a direct result of the implementation of the provisions of this subchapter.

(Pub. L. 105-391, title IV, §405, Nov. 13, 1998, 112 Stat. 3508.)

#### REFERENCES IN TEXT

The National Park Service Concessions Policy Act, referred to in subsec. (b)(1), is Pub. L. 89-249, Oct. 9, 1965, 79 Stat. 969, which was classified generally to subchapter IV (§20 et seq.) of chapter 1 of this title prior to repeal by Pub. L. 105-391, title IV, §415(a), Nov. 13, 1998, 112 Stat. 3515.

The effective date of this subchapter, referred to in subsecs. (b)(2) and (c), probably means the date of enactment of this subchapter, which was approved Nov. 13, 1998.

#### CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### DE NOVO REVIEW OF VALUE DETERMINATION DECISIONS BY UNITED STATES COURT OF FEDERAL CLAIMS

Pub. L. 110-161, div. F, title I, Dec. 26, 2007, 121 Stat. 2107, provided in part that: "For fiscal year 2008 and hereafter, if the Secretary of the Interior, or either party to a value determination proceeding conducted under a National Park Service concession contract issued prior to 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 of any such decision, the de novo review of the value determination decision by the United States Court of Federal Claims. This court may make an order affirming, vacating, modifying or correcting the determination decision."

### § 5955. Reasonableness of rates

#### (a) In general

Each concessions 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) of this section.

#### (b) Approval by Secretary required

A concessioner's rates and charges to the public shall be subject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as 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 contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant by the Secretary: length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and type of patronage. Such rates and charges may not exceed

the market rates and charges for comparable facilities, goods, and services, after taking into account the factors referred to in the preceding sentence.

#### (c) Implementation of recommendations

Not later than 6 months after receiving recommendations from the Advisory Board established under section 5958(a) of this title regarding concessioner rates and charges to the public, the Secretary shall implement the recommendations or report to the Congress the reasons for not implementing the recommendations.

(Pub. L. 105-391, title IV, §406, Nov. 13, 1998, 112 Stat. 3510.)

### § 5956. Franchise fees

#### (a) In general

A concessions contract shall provide for payment to the government of a franchise fee or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

#### (b) Amount of franchise fee

The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concessions contract shall be specified in the concessions contract and may only be modified to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the contract. The Secretary shall include in concessions contracts with a term of more than 5 years a provision which allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of such extraordinary unanticipated changes. Such provision shall provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

#### (c) Special account

All franchise fees (and other monetary consideration) paid to the United States pursuant to concessions contracts shall be deposited into a special account established in the Treasury of the United States. Twenty percent of the funds deposited in the special account shall be available for expenditure by the Secretary, without further appropriation, to support activities throughout the National Park System regardless of the unit of the National Park System in which the funds were collected. The funds deposited into the special account shall remain available until expended.

#### (d) Subaccount for each unit

There shall be established within the special account required under subsection (c) of this section a subaccount for each unit of the Na-

tional Park System. Each subaccount shall be credited with 80 percent of the franchise fees (and other monetary consideration) collected at a single unit of the National Park System under concessions contracts. The funds credited to the subaccount for a unit of the National Park System shall be available for expenditure by the Secretary, without further appropriation, for use at the unit for visitor services and for purposes of funding high-priority and urgently necessary resource management programs and operations. The funds credited to a subaccount shall remain available until expended.

(Pub. L. 105-391, title IV, §407, Nov. 13, 1998, 112 Stat. 3511.)

#### § 5957. Transfer of concessions contracts

##### (a) Approval of Secretary

No concessions contract or leasehold surrender interest may be transferred, assigned, sold, or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary.

##### (b) Conditions

The Secretary shall approve a transfer or conveyance described in subsection (a) of this section unless the Secretary finds that—

(1) the individual, corporation or entity seeking to acquire a concessions contract is not qualified or able to satisfy the terms and conditions of the concessions contract;

(2) such transfer or conveyance would have an adverse impact on (A) the protection, conservation, or preservation of the resources of the unit of the National Park System or (B) the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(3) the terms of such transfer or conveyance are likely, directly or indirectly, to reduce the concessioner's opportunity for a reasonable profit over the remaining term of the contract, adversely affect the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of such facilities and services.

##### (c) Transfer terms

The terms and conditions of any contract under this section shall not be subject to modification or open to renegotiation by the Secretary because of a transfer or conveyance described in subsection (a) of this section, unless such transfer or conveyance would have an adverse impact as described in paragraph (2) of subsection (b) of this section.

(Pub. L. 105-391, title IV, §408, Nov. 13, 1998, 112 Stat. 3512.)

#### § 5958. National Park Service Concessions Management Advisory Board

##### (a) Establishment

There is hereby established a National Park Service Concessions Management Advisory Board (in this subchapter referred to as the "Advisory Board") whose purpose shall be to advise the Secretary and National Park Service on

matters relating to management of concessions in the National Park System.

##### (b) Duties

###### (1) Advice

The Advisory Board shall advise on each of the following:

(A) Policies and procedures intended to assure that services and facilities provided by concessioners are necessary and appropriate, meet acceptable standards at reasonable rates with a minimum of impact on park resources and values, and provide the concessioners with a reasonable opportunity to make a profit.

(B) Ways to make National Park Service concessions programs and procedures more cost effective, more process efficient, less burdensome, and timelier.

###### (2) Recommendations

The Advisory Board shall make recommendations to the Secretary regarding each of the following:

(A) National Park Service contracting with the private sector to conduct appropriate elements of concessions management and providing recommendations to make more efficient, less burdensome, and timelier the review or approval of concessioner rates and charges to the public.

(B) The nature and scope of products which qualify as Indian, Alaska Native, and Native Hawaiian handicrafts within this<sup>1</sup> meaning of this subchapter.

(C) The allocation of concession fees.

The initial recommendations under subparagraph (A) relating to rates and charges shall be submitted to the Secretary not later than one year after the first meeting of the Board.

###### (3) Annual report

The Advisory Board, commencing with the first anniversary of its initial meeting, shall provide an annual report on its activities to the Committee on Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

##### (c) Advisory Board membership

Members of the Advisory Board shall be appointed on a staggered basis by the Secretary for a term not to exceed 4 years and shall serve at the pleasure of the Secretary. The Advisory Board shall be comprised of not more than seven individuals appointed from among citizens of the United States not in the employment of the Federal Government and not in the employment of or having an interest in a National Park Service concession. Of the seven members of the Advisory Board—

(1) one member shall be privately employed in the hospitality industry and have both broad knowledge of hotel or food service management and experience in the parks and recreation concessions business;

(2) one member shall be privately employed in the tourism industry;

<sup>1</sup> So in original. Probably should be "the".