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(j) *Visitor services authorization* is a written authorization from the Director to provide visitor services in a park area. Such authorization may be in the form of a concession permit, concession contract, or other document issued by the Director under National Park Service policies and procedures.

§ 13.82 Historical operators.

(a) A historical operator will have a right to continue to provide visitor services in a park area under appropriate terms and conditions contained in a visitor services authorization issued by the Director as long as such services are determined by the Director to be consistent with the purposes for which the park area was established. A historical operator may not operate without such an authorization. The authorization will be for a fixed term. Failure to comply with the terms and conditions of the authorization will result in cancellation of the authorization and consequent loss of historical operator rights under this subpart.

(b) Nothing in this subpart will prohibit the Director from permitting persons in addition to historical operators to provide visitor services in park areas at the Director's discretion as long as historical operators are permitted to conduct a scope and level of visitor services equal to those provided before January 1, 1979, under terms and conditions consistent with this subpart. A historical operator may be permitted by the Director under separate authority to increase the scope or level of visitor services provided prior to January 1, 1979, but no historical operating rights will be obtained in such increase.

(c) If a historical operator applies for a visitor services authorization in the form of a joint venture, the application will not be considered as validly made unless the historical operator demonstrates, to the satisfaction of the Director, that it has the controlling interest in the joint venture.

(d) A historical operator may apply to the Director for an authorization or amended authorization to provide visitor services similar to those it provided before January 1, 1979. The Director will grant the request if such visitor services are determined by the Director to be:

(1) Consistent with the protection of park resources and the purposes for which the park area was established;

(2) Similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; and

(3) Consistent with the legal rights of any other person.

(e) When a historical operator's visitor services authorization expires, and if the applicable visitor services continue to be consistent with the purposes for which the park area was established as determined by the Director, the Director will offer to renew the authorization for a fixed term under such new terms and conditions as the Director determines are in the public interest.

(f) If the Director determines that authorized visitor services must be curtailed or reduced in scope, level, or season to protect park resources, or for other purposes, the Director will require the historical operator to make such changes in visitor services. If more than one historical operator providing the same type of visitor services is required to have those services curtailed, the Director will establish a proportionate reduction of visitor services among all such historical operators, taking into account historical operating levels and other appropriate factors so as to achieve a fair curtailment of visitor services among the historical operators. If the level of visitor services must be so curtailed that only one historical operator feasibly may continue to provide the visitor services, the Director will select one historical operator to continue to provide the curtailed visitor services through a competitive selection process.

(g) Any of the following will result in loss of historical operator status:

(1) Revocation of an authorization for historic types and levels of visitor services for failure to comply with the terms and conditions of the authorization.

(2) A historical operator's declination of a renewal of the authorization made pursuant to paragraph (d) of this section.

(3) A change in the controlling interest of the historical operator through sale, assignment, devise, transfer, or by any other means, direct or indirect. A change in the controlling interest of a historical operator that results only in the acquisition of the controlling interest by an individual or individuals who were personally engaged in the visitor services activities of the historical operator before January 1, 1979, will not be deemed a change in the historical operator's controlling interest for the purposes of this subpart.

(4) A historical operator's failure to provide the authorized services for more than 24 consecutive months.

(h) The Director may authorize other persons to provide visitor services in a park area in addition to historical operators.

EFFECTIVE DATE NOTE: At 61 FR 54340, Oct. 18, 1996, §13.82 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 13.83 Preferred operators.

(a) In selecting persons to provide visitor services for a park area, the Director will, if the number of visitor services authorizations is to be limited, give a preference (subject to any rights of historical operators or CIRI under this subpart) to preferred operators determined qualified to provide such visitor services.

(b) In such circumstances, the Director will publicly solicit competitive offers for persons to apply for a visitor services authorization, or the renewal of such an authorization, to provide such visitor services pursuant to 36 CFR part 51 and/or other National Park Service procedures. All offerors, including preferred operators, must submit a responsive offer to the solicitation in order to be considered for the authorization. If the best offer from a preferred operator is at least substantially equal to the best offer from a non-preferred operator, the preferred operator will receive authorization. If an offer from a person besides a preferred operator is determined to be the best offer (and no preferred operator submits a responsive offer that is substantially equal to it), the preferred operator who submitted the best offer from among the offers submitted by preferred operators will be given the opportunity, by amending its offer, to meet the terms and conditions of the best offer received. If the amended offer of such a preferred operator is considered by the Director as at least substantially equal to the best offer, the preferred operator will receive the visitor service authorization. If a preferred operator does not amend its offer to meet the terms and conditions of the best offer, the Director will issue the authorization to the person who submitted the best offer in response to the solicitation.

(c) The Native Corporation(s) determined to be ''most directly affected'' under this subpart and local residents have equal preference. The rights of preferred operators under this section take precedence over the right of preference that may be granted to existing satisfactory National Park Service concessioners pursuant to the Concessions Policy Act (16 U.S.C. 20) and its implementing regulations and procedures, but do not take precedence over the rights of historical operators or CIRI as described in this subpart.

(d) An offer from a preferred operator under this subpart, if the offer is in the form of a joint venture, will not be considered valid unless it documents to the satisfaction of the Director that the preferred operator holds the controlling interest in the joint venture.

(e) Nothing in this subpart will prohibit the Director from authorizing persons besides preferred operators to provide visitor services in park areas as long as the procedures described in this section have been followed. Preferred operators are not entitled by this section to provide all visitor services in a park area.

(f) The preferences described in this section may not be sold, assigned, transferred or devised, directly or indirectly.

EFFECTIVE DATE NOTE: At 61 FR 54340, Oct. 18, 1996, §13.83 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.