

HISTORICAL AND REVISION NOTES

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

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

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

Editorial Notes

REFERENCES IN TEXT

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 of chapter 1 of Title 16, Conservation, and amended section 462 of Title 16, prior to being repealed by Pub.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

§ 101916. Reasonableness of rates and charges

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

(b) APPROVAL BY SECRETARY REQUIRED.—

(1) FACTORS TO CONSIDER.—A concessioner's rates and charges to the public shall be 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 concession contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant by the Secretary:

- (A) Length of season.
- (B) Peakloads.
- (C) Average percentage of occupancy.
- (D) Accessibility.
- (E) Availability and costs of labor and materials.
- (F) Type of patronage.

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

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

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

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

§ 101917. Franchise fees

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

(b) PROVISIONS TO BE SPECIFIED IN CONTRACT.—The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract shall be specified in the concession contract and may be modified only to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the concession contract. The Secretary shall include in concession contracts with a term of more than 5 years a provision that allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of extraordinary unanticipated changes. The provision shall provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree on an adjustment to the franchise fee in those circumstances.

(c) SPECIAL ACCOUNT IN TREASURY.—

(1) DEPOSIT AND AVAILABILITY.—All franchise fees (and other monetary consideration) paid to the United States pursuant to concession contracts shall be deposited in a special account established in the Treasury. 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 System regardless of the System unit in which the funds were collected. The funds deposited in the special account shall remain available until expended.

(2) SUBACCOUNT FOR EACH SYSTEM UNIT.—There shall be established within the special account a subaccount for each System unit. Each subaccount shall be credited with 80 percent of the franchise fees (and other monetary consideration) collected at a single System

unit under concession contracts. The funds credited to the subaccount for a System unit shall be available for expenditure by the Secretary, without further appropriation, for use at the System 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.

(3) REDUCTION.—The Secretary may reduce the percentage allocation otherwise applicable under paragraph (2) to a unit or area of the National Park Service for a fiscal year if the Secretary determines that the revenues collected at the unit or area exceed the reasonable needs of the unit or area for which expenditures may be made for that fiscal year. In no event may a percentage allocation be reduced below 60 percent.

(Pub. L. 113–287, §3, Dec. 19, 2014, 128 Stat. 3146; Pub. L. 118–42, div. E, title I, §121, Mar. 9, 2024, 138 Stat. 249.)

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Revised Section	Source (U.S. Code)	Source (Statutes at Large)
101917	16 U.S.C. 5956.	Pub. L. 105–391, title IV, §407, Nov. 13, 1998, 112 Stat. 3511.

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AMENDMENTS

2024—Subsec. (c)(3). Pub. L. 118–42 added par. (3).

§ 101918. Transfer or conveyance of concession contracts or leasehold surrender interests

(a) APPROVAL OF SECRETARY.—No concession 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) unless the Secretary finds that—

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

(2) the transfer or conveyance would have an adverse impact on—

(A) the protection, conservation, or preservation of the resources of the System unit; or

(B) the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(3) the terms of the transfer or conveyance are likely, directly or indirectly, to—

(A) reduce the concessioner’s opportunity for a reasonable profit over the remaining term of the concession contract;

(B) adversely affect the quality of facilities and services provided by the concessioner; or

(C) result in a need for increased rates and charges to the public to maintain the quality of the facilities and services.

(c) MODIFICATION OR RENEGOTIATION OF TERMS.—The terms and conditions of any con-

cession 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) unless the transfer or conveyance would have an adverse impact as described in subsection (b)(2).

(Pub. L. 113–287, §3, Dec. 19, 2014, 128 Stat. 3147.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
101918	16 U.S.C. 5957.	Pub. L. 105–391, title IV, §408, Nov. 13, 1998, 112 Stat. 3512.

In subsection (b)(1), the word “other” is added for consistency in the subchapter. See section 101926 of the revised title.

§ 101919. National Park Service Concessions Management Advisory Board

(a) ESTABLISHMENT AND PURPOSE.—There is a National Park Service Concessions Management Advisory Board whose purpose shall be to advise the Secretary and Service on matters relating to management of concessions in the System.

(b) DUTIES.—

(1) ADVICE.—The Advisory Board shall advise on each of the following:

(A) Policies and procedures intended to ensure that services and facilities provided by concessioners—

- (i) are necessary and appropriate;
- (ii) meet acceptable standards at reasonable rates with a minimum of impact on System unit resources and values; and
- (iii) provide the concessioners with a reasonable opportunity to make a profit.

(B) Ways to make Service concession 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) The Service contracting with the private sector to conduct appropriate elements of concession management.

(B) Ways to make the review or approval of concessioner rates and charges to the public more efficient, less burdensome, and timelier.

(C) The nature and scope of products that qualify as Indian, Alaska Native, and Native Hawaiian handicrafts within the meaning of this subchapter.

(D) The allocation of concession fees.

(3) ANNUAL REPORT.—The Advisory Board shall provide an annual report on its activities to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the 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 7 individuals appointed