

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 Service concession. Of the 7 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 concession business;

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

(3) one member shall be privately employed in the accounting industry;

(4) one member shall be privately employed in the outfitting and guide industry;

(5) one member shall be a State government employee with expertise in park concession management;

(6) one member shall be active in promotion of traditional arts and crafts; and

(7) one member shall be active in a nonprofit conservation organization involved in parks and recreation programs.

(d) **SERVICE ON ADVISORY BOARD.**—Service of an individual as a member of the Advisory Board shall not be deemed to be service or employment bringing the individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of individuals, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Advisory Board shall not be deemed service in an appointive or elective position in the Federal Government for purposes of section 8344 of title 5 or other comparable provisions of Federal law.

(e) **TERMINATION.**—The Advisory Board shall continue to exist until December 31, 2009. In all other respects, it shall be subject to chapter 10 of title 5.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3147; Pub. L. 117–286, § 4(a)(329), Dec. 27, 2022, 136 Stat. 4342.)

#### HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i>      | <i>Source (Statutes at Large)</i>  |
|------------------------|--------------------------------|--|
| 101919(a) through (c). | 16 U.S.C. 5958(a) through (c). | Pub. L. 105–391, title IV, § 409, Nov. 13, 1998, 112 Stat. 3512; Pub. L. 111–11, subtitle VII, subtitle E, § 7403, 123 Stat. 1219. |
| 101919(d) .....        | 16 U.S.C. 5958(e).             |  |
| 101919(e) .....        | 16 U.S.C. 5958(d).             |  |

In subsection (b)(2), the text of 16 U.S.C. 5958(b)(2) (last sentence) is omitted as obsolete.

In subsection (b)(3), the words “commencing with the first anniversary of its initial meeting” are omitted as obsolete.

In subsection (d), the word “deemed” is substituted for “considered as” for consistency in this title and with other titles of the United States Code.

#### Editorial Notes

##### AMENDMENTS

2022—Subsec. (e). Pub. L. 117–286 substituted “chapter 10 of title 5.” for “the Federal Advisory Committee Act (5 U.S.C. App.).”

#### § 101920. Contracting for services

(a) **CONTRACTING AUTHORIZED.**—

(1) **MANAGEMENT ELEMENTS FOR WHICH CONTRACT REQUIRED TO MAXIMUM EXTENT PRACTICABLE.**—To the maximum extent practicable, the Secretary shall contract with private entities to conduct or assist in elements of the management of the Service concession program considered by the Secretary to be suitable for non-Federal performance. Those management elements shall include each of the following:

(A) Health and safety inspections.

(B) Quality control of concession operations and facilities.

(C) Strategic capital planning for concession facilities.

(D) Analysis of rates and charges to the public.

(2) **MANAGEMENT ELEMENTS FOR WHICH CONTRACT ALLOWED.**—The Secretary may also contract with private entities to assist the Secretary with each of the following:

(A) Preparation of the financial aspects of prospectuses for Service concession contracts.

(B) Development of guidelines for a System capital improvement and maintenance program for all concession occupied facilities.

(C) Making recommendations to the Director regarding the conduct of annual audits of concession fee expenditures.

(b) **OTHER MANAGEMENT ELEMENTS.**—The Secretary shall consider, taking into account the recommendations of the Advisory Board, contracting out other elements of the concessions management program, as appropriate.

(c) **AUTHORITY OF SECRETARY NOT DIMINISHED.**—Nothing in this section shall diminish the governmental responsibilities and authority of the Secretary to administer concession contracts and activities pursuant to this subchapter and section 100101(a), chapter 1003, and sections 100751(a), 100752, 100753, and 102101 of this title. The Secretary reserves the right to make the final decision or contract approval on contracting services dealing with the management of the Service concessions program under this section.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3149.)

#### HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                                |
|------------------------|---------------------------|--|
| 101920 .....           | 16 U.S.C. 5959.           | Pub. L. 105–391, title IV, § 410, Nov. 13, 1998, 112 Stat. 3514. |

#### § 101921. Multiple contracts within a System unit

If multiple concession contracts are awarded to authorize concessioners to provide the same or similar outfitting, guiding, river running, or other similar services at the same approximate location or resource within a System unit, the Secretary shall establish a comparable franchise fee structure for those contracts or similar contracts, except that the terms and conditions of any existing concession contract shall not be

subject to modification or open to renegotiation by the Secretary because of an award of a new contract at the same approximate location or resource.

(Pub. L. 113-287, §3, Dec. 19, 2014, 128 Stat. 3149.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                               |
|------------------------|---------------------------|---|
| 101921 .....           | 16 U.S.C. 5960.           | Pub. L. 105-391, title IV, §411, Nov. 13, 1998, 112 Stat. 3514. |

**§ 101922. Use of nonmonetary consideration in concession contracts**

Section 1302 of title 40 shall not apply to concession contracts awarded by the Secretary pursuant to this subchapter.

(Pub. L. 113-287, §3, Dec. 19, 2014, 128 Stat. 3150.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                               |
|------------------------|---------------------------|---|
| 101922 .....           | 16 U.S.C. 5962.           | Pub. L. 105-391, title IV, §413, Nov. 13, 1998, 112 Stat. 3515. |

The words relating to the leasing of buildings and properties of the United States” are omitted as unnecessary.

**§ 101923. Recordkeeping requirements**

(a) IN GENERAL.—A concessioner and any subconcessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of a concession contract have been and are being faithfully performed. The Secretary and any authorized representative of the Secretary shall, for the purpose of audit and examination, have access to those records and to other records of the concessioner or subconcessioner pertinent to the concession contract and all terms and conditions of the concession contract.

(b) ACCESS TO RECORDS BY COMPTROLLER GENERAL.—The Comptroller General and any authorized representative of the Comptroller General shall, until the expiration of 5 calendar years after the close of the business year of each concessioner or subconcessioner, have access to and the right to examine any pertinent records described in subsection (a) of the concessioner or subconcessioner related to the contract involved.

(Pub. L. 113-287, §3, Dec. 19, 2014, 128 Stat. 3150.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                               |
|------------------------|---------------------------|---|
| 101923 .....           | 16 U.S.C. 5963.           | Pub. L. 105-391, title IV, §414, Nov. 13, 1998, 112 Stat. 3515. |

In this section, the word “duly” is omitted as unnecessary.

In subsection (a), the words “and any subconcessioner” and “or subconcessioner” are added for clarity. See 36 CFR 51.98. The word “records” is substituted for “books, documents, and papers” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), the words “books, papers, documents” are omitted as included in “records”. The words “described in subsection (a)” are added for clarity.

**§ 101924. Promotion of sale of Indian, Alaska Native, Native Samoan, and Native Hawaiian handicrafts**

(a) IN GENERAL.—Promoting the sale of authentic United States Indian, Alaskan Native, Native Samoan, and Native Hawaiian handicrafts relating to the cultural, historical, and geographic characteristics of System units is encouraged, and the Secretary shall ensure that there is a continuing effort to enhance the handicraft trade where it exists and establish the trade in appropriate areas where the trade does not exist.

(b) EXEMPTION FROM FRANCHISE FEE.—In furtherance of the purposes of subsection (a), the revenue derived from the sale of United States Indian, Alaska Native, Native Samoan, and Native Hawaiian handicrafts shall be exempt from any franchise fee payments under this subchapter.

(Pub. L. 113-287, §3, Dec. 19, 2014, 128 Stat. 3150.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i>                               |
|------------------------|---------------------------|---|
| 101924 .....           | 16 U.S.C. 5964.           | Pub. L. 105-391, title IV, §416, Nov. 13, 1998, 112 Stat. 3516. |

**§ 101925. Commercial use authorizations**

(a) IN GENERAL.—To the extent specified in this section, the Secretary, on request, may authorize a private person, corporation, or other entity to provide services to visitors to System units through a commercial use authorization. A commercial use authorization shall not be considered to be a concession contract under this subchapter and no other section of this subchapter shall be applicable to a commercial use authorization except where expressly stated.

(b) CRITERIA FOR ISSUANCE OF COMMERCIAL USE AUTHORIZATIONS.—

(1) REQUIRED DETERMINATIONS.—The authority of this section may be used only to authorize provision of services that the Secretary determines—

(A) will have minimal impact on resources and values of a System unit; and

(B) are consistent with the purpose for which the System unit was established and with all applicable management plans and Service policies and regulations.

(2) ELEMENTS OF COMMERCIAL USE AUTHORIZATION.—The Secretary shall—

(A) require payment of a reasonable fee for issuance of a commercial use authorization, the fees to remain available without further appropriation to be used, at a minimum, to recover associated management and administrative costs;

(B) require that the provision of services under a commercial use authorization be accomplished in a manner consistent to the highest practicable degree with the preservation and conservation of System unit resources and values;