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36 CFR Ch. I (7-1-08 Edition)

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.

§ 13.315 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

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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.

§ 13.320 Preference to Cook Inlet Region, Incorporated.

(a) The Cook Inlet Region, Incorporated (CIRI), in cooperation with village corporations within the Cook Inlet region when appropriate, will have a right of first refusal to provide new visitor services within that portion of Lake Clark National Park and Preserve that is within the boundaries of the Cook Inlet region. In order to exercise this right of first refusal, the National Park Service will publicly solicit competitive offers for the visitor services authorization pursuant to 36 CFR part 51 or other applicable National Park Service procedures. CIRI must submit a responsive offer within 90 days of such solicitation. If CIRI makes such an offer and is determined by the Director to be capable of carrying out the terms and conditions of the visitor services authorization, it will receive the authorization. If it does not, the authorization may be awarded to another person pursuant to usual National Park Service policies

and procedures if otherwise appropriate.

(b) The CIRI right of first refusal will have precedence over the rights of preferred operators. An offer from CIRI under this section, if the offer is in the form of a joint venture, will not be considered valid unless it demonstrates to the satisfaction of the Director that CIRI has a controlling interest in the joint venture.

(c) The CIRI right of first refusal may not be sold, transferred, devised or assigned, directly or indirectly.

§ 13.325 Most directly affected Native Corporation.

(a) Before the award of the first visitor service authorization in a park area to be made after the effective date of this subpart, the Director will provide an opportunity for any Native Corporation interested in providing visitor services within the applicable park area to submit an application to the superintendent to be determined the Native Corporation most directly affected by the establishment or expansion of the park area by or under the provisions of ANILCA. An application from an interested Native Corporation will include the following information:

(1) Name, address, and phone number of the Native Corporation; date of incorporation; its articles of incorporation and structure;

(2) Location of the corporation's population center or centers; and

(3) An assessment of the socio-economic impacts, including historical and traditional use and land-ownership patterns and their effects on the Native Corporation as a result of the expansion or establishment of the applicable park area by ANILCA.

(4) Any additional information the Native Corporation considers relevant or the Director may reasonably require.

(b) Upon receipt of all applications from interested Native Corporations, the Director will determine the "most directly affected" Native Corporation considering the following factors:

(1) Distance and accessibility from the corporation's population center and/or business address to the applicable park area; and