

**Department of the Interior**  
**Departmental Manual**

**Effective Date:** 3/12/99

**Series:** Safety Management

**Part 485:** Safety and Occupational Health Program

**Chapter 22:** Watercraft Safety

**Originating Office:** Office of Managing Risk and Public Safety

**485 DM 22**

**22.1 Purpose.** To establish minimum requirements for the safe operation of Department of the Interior watercraft and other non-motorized boats, and for the training and certification of Departmental watercraft operators.

**22.2 References.**

- A. 33 CFR, Navigation and Navigable Waters, Subchapter S, Boating Safety.
- B. 46 CFR 2, Shipping, U.S. Coast Guard, Department of Transportation, Requirements.
- C. 410 DM, Department of the Interior Property Management Regulations.

**22.3 Definitions.**

- A. Motorboat. Any watercraft 65 feet or less in length, that does not require a U.S. Coast Guard license or certification to operate.
- B. Operator. The individual in physical control of the watercraft.
- C. Motorboat Classifications:
  - (1) Class A. Motorboat less than 16 feet in length.
  - (2) Class 1. Motorboat 16 feet to less than 26 feet in length.
  - (3) Class 2. Motorboat 26 feet to less than 40 feet in length.
  - (4) Class 3. Motorboat 40 feet to 65 feet in length.
- D. Watercraft. Boats and ships, collectively, including air boats, sailboats, and every description of watercraft, except seaplanes, which are used or capable of being used, as a means of transportation on water; and are propelled by machinery whether or not such machinery is the principle source of propulsion.

**22.4 Requirements.** Bureaus engaged in watercraft operations will establish a watercraft safety program that includes the following minimum requirements:

A. Safe Watercraft Operation.

- (1) Departmental watercraft will be operated in a safe and prudent manner and in accordance with recognized Federal, State, and local laws and standards, in addition to the requirements of this Chapter.
- (2) Departmental watercraft will meet or exceed applicable U.S. Coast Guard design/equipment requirements.
- (3) In addition to basic safety devices required by local, State, or Federal regulations, Departmental watercraft will be outfitted, based on expected conditions, with other equipment necessary for safe operation. This may include communications gear, navigation aids, and Satnav. Special consideration should be given for the use of emergency location devices such as Emergency Position Indicator Radio Beacon or personal locator beacons. Use of these devices is highly recommended where situations may warrant.
- (4) Operators of Departmental watercraft shall be adequately trained, properly tested and certified, prior to official operation of any Departmental watercraft. Certification will be in accordance with Section 22.5 of this Chapter. Prior to certification, employees may practice motorboat operation under the supervision of a certified operator aboard the watercraft. Motorboat operation by non-certified employees will only be used to gain experience prior to completing the necessary training requirements and being certified.
- (5) On Class A or Class 1 vessels, all persons must wear a U.S. Coast Guard-approved personal flotation device (PFD) at all times while on board. On Class 2 or Class 3 vessels, all persons must wear U.S. Coast Guard approved PFDs at all times when on an open space such as the deck, and at the discretion of the vessel operator at other locations on the vessel.
- (6) PFDs will be international orange in color and equipped with retro reflective tape in accordance with 46 CFR 25.25-15. (See Appendix 3 of this Chapter.)
- (7) Deviation from the requirements of Section 22.4A(6) of this Chapter may be permitted if special mission requirements, such as may be involved in special law enforcement operations, cannot be otherwise satisfied. Deviations must be authorized in writing by the supervisor of the organizational unit conducting the operation prior to the conduct of the activity. The written authorization will identify alternate safety measures to be taken. Deviations will be authorized on a case-by-case basis except where they have the concurrence of a regional (or equivalent) safety manager. In those cases, the deviation may be authorized for a period not to exceed one year. Deviation from other requirements of this Chapter is not permitted.
- (8) Cold water protective equipment, such as exposure suits and/or immersion suits, will be provided where cold water conditions pose a hazard during watercraft operations. All personnel on board will be trained in the use of this equipment.
- (9) Periodic inspection and maintenance programs will be established for all Departmental watercraft, as required by reference identified in Section 22.2C of this Chapter. Records of inspections and maintenance will also be kept in accordance with Section 22.2C.

(10) Departmental employees operating watercraft subject to U.S. Coast Guard licensing regulations will be licensed in accordance with the requirements of reference identified in Section 22.2B of this Chapter, notwithstanding the general exemption of Federal titled watercraft under that reference. Departmental watercraft will meet the applicable U.S. Coast Guard inspection and certification requirements.

#### B. Operator Training and Certification.

(1) Operators of Departmental watercraft will be trained in safe watercraft operation in accordance with the requirements of this Chapter.

(a) Operators of all motorboats, other than those requiring U.S. Coast Guard licensed operators (see reference identified by Section 22.4B(1)(b) of this Chapter), will successfully complete the Motorboat Operator Certification Course (MOCC) training requirements specified in Section 22.5C and Appendix 2 of this Chapter. All current operators will be trained and certified in accordance with these requirements.

(b) Operators of watercraft covered by U.S. Coast Guard requirements identified in Section 22.2A will complete all training and certification requisites for operation of those vessels.

(2) Motorboat operator certification will be valid for a period of five years, except that operators certified before October 1, 1995, will remain certified until October 1, 1999. Prior to recertification, operators will complete an 8-hour refresher course that addresses the minimum subject areas described in Section 2.4 of Appendix 2 of this Chapter.

(3) Operators of non-motorized boats are exempted from the requirements of Section 22.5 below. However, they must receive alternate appropriate training necessary for the safe operation of these boats, as determined by the bureau safety manager.

#### 22.5 Training and Certification.

A. The Office of Managing Risk and Public Safety, in coordination with the bureaus, will develop and maintain standards for the Motorboat Operator Instructor Certification Course (MOICC), the MOCC, and the 8-hour refresher training.

B. Appendix 1 outlines the MOICC standards. Employees successfully completing the MOICC will be authorized to present the MOCC and to certify individuals to operate Departmental watercraft. Completion of the MOICC satisfies the requirements of Section 22.4B(1)(a) of this Chapter.

C. Appendix 2 outlines the authorized local MOCC standards. Appendix 2 details minimum requirements only; bureaus should add additional modules meeting specific bureau and local needs. Individuals successfully completing the MOCC will be certified for operation of Departmental watercraft. This course is to be instructed by persons trained in the MOICC as described in Appendix 1 of this Chapter. Training materials will be developed by the Department and distributed to bureaus as necessary for reproduction and use.

D. Other watercraft training programs may be substituted for the Departmental MOCC. Requests for substitution must be submitted to the bureau safety manager or, at his or her discretion, the bureau designated responsible person identified in Section 22.5E. Substituted training must demonstrate that it will meet the MOCC objectives, including on-water proficiency. (See Appendix 2.) Examples of acceptable training are the U.S. Army Corps of Engineers Boat Operators Training Course and the

Federal Law Enforcement Training Center (FLETC) Marine Law Enforcement Training Program.

E. (1) Each bureau with watercraft operations will designate an individual as the responsible person for all watercraft training and certification activities within the organization. This individual will help coordinate watercraft safety activities and operator certification functions, and serve as a program point of contact with other bureaus and the Department. That individual must have successfully completed the Departmental approved 40-hour MOICC as outlined in Appendix 1. For implementation of this Chapter, this individual must complete the training prior to October 1, 1996. Additional instructors will be designated, as necessary to assist in motorboat operator certification training. All instructors must complete the Departmental MOICC.

(2) Watercraft Safety Work Group. A Departmental standing Watercraft Safety Working Group will be established to serve as a forum for peer group discussion of watercraft safety issues, and to provide policy and program recommendations and other input to the Department of the Interior Safety and Occupational Health Council. The work group membership will consist of the bureau coordinators identified in Section 22.5E(1) above, in addition to other designated individuals. The work group will meet as necessary, but generally at least once annually.

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## APPENDIX 1

### MOTORBOAT OPERATOR INSTRUCTOR CERTIFICATION COURSE (MOICC)

#### STANDARDS

**1.1 Course Description.** The MOICC is a course targeted toward experienced motorboat operators. It stresses the learning of specific motorboat handling techniques and knowledge through extensive hands-on practical exercises and instruction, with a minimum of classroom presentation. Since one objective of this course is to qualify individuals to present MOCC training to other Departmental personnel, there is additional training in instructional techniques and presentation.

**1.2 Course Objectives.** The MOICC objectives are to:

- A. Provide attendees with specific skills and knowledge needed to safely operate watercraft.
- B. Familiarize attendees with state-of-the-art watercraft safety equipment and other gear, through demonstration and actual use.
- C. Train and qualify personnel to serve as instructors of the MOCC.

**1.3 Course Length.** The MOICC will include at least 36 instructional hours. Course instructional hours may be increased to address specific bureau operational needs.

**1.4 Minimum Subject Areas.** The following mandatory subject areas will be presented in the MOICC:

- A. Bureau Watercraft Policies.

- B. Required Safety Equipment.
- C. Motorboats and Motorboat Maintenance.
- D. Trailers and Trailer Maintenance.
- E. Navigation Aids/Rules of the Road.
- F. Emergency Operations.
- G. Fire Suppression.
- H. Motorboat Orientation/Marlinspike.
- I. Motorboat At-Speed and Low-Speed Maneuvering.
- J. Alongside Maneuvering.
- K. Trailing
- L. Towing.
- M. Instructional Techniques.

1.5 **Other Standards.** A maximum student/instructor ratio of 3:1 will be maintained.

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## **APPENDIX 2**

### **MOTORBOAT OPERATOR CERTIFICATION COURSE (MOCC)**

#### **STANDARDS**

2.1 **Course Description.** The MOCC is a course targeted toward individuals whose jobs require them to operate watercraft for the Department. It stresses the learning of specific motorboat handling techniques and knowledge through extensive hands-on practical exercises and instruction, with a minimum of classroom presentation.

2.2 **Course Objectives.** The MOCC objectives are to:

- A. Provide attendees with specific skills and knowledge needed to safely operate watercraft.
- B. Familiarize attendees with state-of-the-art watercraft safety equipment and other gear, through demonstration and actual use,
- C. Allow attendees to demonstrate, through written examination and physical demonstration, that they

have adequate grasp of motorboat handling techniques and knowledge to safely operate a motorboat.

**2.3 Course Length.** The MOCC will include at least 24 instructional hours. Course instructional hours may be increased to address specific bureau operational needs.

**2.4 Minimum Subject Areas.** The following mandatory subject areas will be presented in the MOCC:

- A. Agency Watercraft Policies.
- B. Required Safety Equipment.
- C. Motorboats and Motorboat Maintenance.
- D. Trailers and Trailer Maintenance.
- E. Navigation Aids/Rules of the Road.
- F. Emergency Operations.
- G. Fire Suppression.
- H. Motorboat Orientation/Marlinspike.
- I. Motorboat At-Speed and Low-Speed Maneuvering.
- J. Alongside Maneuvering.
- K. Trailering.
- L. Towing.

**2.5 Other Standards.**

A. A maximum student/instructor ratio of 3:1 should be maintained to ensure that attendees obtain necessary operating techniques and knowledge.

B. MOCC instructors will have successfully completed the MOICC. Instructors will participate in MOCC presentations at least once over any three year period to maintain proficiency.

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**APPENDIX 3**

**RETRO REFLECTIVE MATERIAL FOR PERSONAL FLOTATION DEVICES**

**(REFERENCE 46 CFR 25.25-15)**

"(a) Each life preserver, each marine buoyant device intended to be worn, and each buoyant vest carried on a vessel must have Type I retro reflective material that is approved under Subpart 164.018 of this chapter.

(b) Each item required to have retro reflective material must have at least 200 sq. cm. (31 sq. in.) of material attached to its front side, at least 200 sq. cm. of material on its back side, and, if the item is reversible, at least 200 sq. cm. of material on each of its reversible sides. The material attached on each side of the item must be divided equally between the upper quadrants of the side, and the material in each quadrant must be attached as closely as possible to the shoulder area of the item."

3/12/99 #3252

Replaces 11/20/95 #485A-4

[Click here to download in WordPerfect format](#)

WATERCRAFT SAFETY

Chapter Number: 21

Chapter Title: Watercraft Safety

Legal Requirements: 485 DM 22; 36 CFR 3.1

Program Objectives: This chapter specifies the minimum program requirements for the safe operation of watercraft by all NPS employees. By instituting the standards outlined in this chapter, NPS employees will minimize the risk of personal injury or property damage to themselves, NPS equipment and the general public.

Requirements related to the public's safe operation of watercraft on waters controlled by NPS are covered under Chapter 22 of NPS-50, as well as 36 CFR 3.1.

Program Requirements: Every NPS worksite engaged in watercraft operations should establish a section dedicated to such operations in their Documented Safety Plan. To be deemed satisfactory, the section must include the following minimum requirements:

- A. No watercraft will be operated that does not meet the applicable United States Coast Guard (USCG) design and equipment requirements for the service contemplated.
- B. Operators and passengers of vessels 26 feet or longer should wear a USCG-approved personal floatation device (PFD) and be trained in hypothermia precautions.
- C. Operators and passengers of vessels less than 26 feet in length should wear a USCG-approved PFD and be trained in hypothermia precautions.
- D. Operators of all watercraft should be qualified in the safe operation of the craft to which they are assigned and authorized by the operator's supervisor, as follows:
  1. Operators of vessels 26 feet or longer in length are not required to be Coast Guard licensed but must meet all USCG licensing requirements.
  2. Operators of vessels less than 26 feet in length must be certified through a park motorboat operator training and evaluation system (a typical standard operating procedure is attached to this chapter as Appendix 21-1).

- E. The design and maintenance of all marine facilities within the park should be in compliance with all applicable Health and Safety Codes.

Program Responsibilities:

A. Park Superintendent or Site Manager

Ensures that a Documented Safety Plan is prepared that includes a section on watercraft operation, and that such a plan is operational. This includes insuring that no unqualified nor untrained employees engage in the operation of NPS watercraft within his or her area of jurisdiction.

B. Park Safety Officer

Provides the site manager with the technical assistance necessary to secure the appropriate training for NPS employees assigned to these types of tasks. Assists supervisors in developing standard operating procedures for watercraft in the park.

C. Watercraft Supervisors

Makes sure that only qualified operators are employed and/or allowed to utilize watercraft equipment under his or her control. This includes securing the necessary training for employees in proper watercraft operation, and hypothermia precautions, as well as taking action to ensure that PFDs are being worn and all park operating procedures are being followed.

D. Employees

Follow all park standard operating procedures for the use of watercraft. Wears appropriate safety equipment and attends all necessary training. Obtains necessary certification to operate type of watercraft assigned to him or her. Reports all unsafe acts or conditions to supervisor immediately or as soon as practical. Does not operate watercraft unless passengers follow all safety precautions.

Standard Operating Procedures  
Watercraft Operation Certification

VESSELS:

A person should be certified to operate a vessel when they have successfully demonstrated knowledge of, and sufficient skill in, the following areas:

- proper fueling procedures/mixing of fuel for outboards
- proper boarding and loading of passengers
- correct methods of securing lines for docking/towing, etc.
- keeps log and vehicle use book up-to-date and accurate
- knowledge of proper checkout procedures for engine and vessel, as part of routine operation
- ability to use compass and nautical charts for effective navigation
- sufficient knowledge of rules of the road for safe operation
- proper starting procedures; dual battery operation
- use and understanding of navigation lighting for safe night operation
- knowledge of proper techniques for approaching, boarding and assisting other vessels
- proper docking techniques
- sufficient knowledge of seamanship and boat handling for safe operation
- care and use of PFD's
- emergency response capabilities; e.g., fire extinguisher use, flares, etc.
- successful completion of basic USCG boating booklet, Skipper's Course, or equivalent

All skills listed above have been demonstrated to the satisfaction of F11S, USCG licensed captain.

DATE CHECKED OUT: \_\_\_\_\_

VESSEL CHECKED OUT ON: \_\_\_\_\_

NAME OF OPERATOR: \_\_\_\_\_

CERTIFIED BY: \_\_\_\_\_

COMMENTS:



# Doing Business with the National Park Service

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## OVERVIEW

Mission  
Legacy  
Business  
Acreage  
Legal  
Criteria  
Local  
Support  
Stewardship  
Field Offices  
Parks

The National Park Service administers three hundred plus areas in the System. There are three principal categories used in classification; namely, natural areas, historical areas, and recreational areas. The use of the National Parks by over 250 million visitors annually makes a significant contribution to the economy of the Nation. From this enormous visitation, most benefits go to business in the form food, lodging, and travel expenditures. Many other benefits, however, are passed on to local or national firms by way of services or supplies actually required to operate the National Park System.

The National Park Service expends approximately \$200 million annually for goods and services acquired under contract. Over 90 percent of these dollars go to small businesses. The majority of the procurement dollars are spent in the area of construction. The remainder are spent for automated data processing hardware, software and services; maintenance services; professional services (including architect and engineer services); heavy equipment and various other supply type items.

Proposed procurements in excess of \$25,000 are advertised in the "Commerce Business Daily." This is a synopsis of U.S. Government-proposed acquisitions and contract awards and is available by writing:

*U.S. Department of Commerce  
Commerce Business Daily Section  
Office of Field Operations  
Post Office Box 5999  
Chicago, IL 60680*

Also, you may submit a Standard Form 129, Bidders Mailing List Application, to those contracting offices within the Service with which you would like to do business and request to be placed on the Bidders Mailing List. You will then receive solicitations for those goods or services which you propose to provide.

Each contracting activity is governed by the Federal Acquisition Regulations and the Department of the Interior Acquisition Regulations (Title 48, Code of Federal Regulation), the Federal Property Management Regulations (Title 41, Code of Federal Regulation), the Federal Information Resources Management Regulations (Title 41, Code of Federal Regulation), and various other Agency regulations. These regulations govern procurement planning and requirements analysis, required sources of supply, equipment replacement (use) standards, solicitation procedures, evaluations and award processes, contract administration and close out procedures, etc. Copies of these

regulations are available to the public and may be purchased through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

In addition, you may get information, counseling, and assistance from the Director of Business Services, GSA, at the following twelve regional locations:

#### **GSA Regional Offices**

7th & D sts., SW Washington, DC 20407	Thomas P. O'Neill Federal Building 10 Causeway St., Room 290 Boston, MA 0222	The Wannamaker Bldg. 100 Penn Square East, Rm. 808 Philadelphia, PA 19107
Jacob K. Javits Federal Bldg. 26 Federal Plaza New York, NY 10278	Denver Federal Center P.O. Box 25006 B41 Rm. 141 Denver, CO 80225- 0006	300 North Los Angeles St. Los Angeles, CA 90012-2000
Room 2413 15th and C sts., SW Auburn, WA 98001	525 Market St. San Francisco, CA 94105	401 West Peachtree St Room 2900 Atlanta, GA 30303
200 South Dearborn St. Chicago, IL 60604	1500 East Bannister Rd. Kansas City, MO 64131	819 Taylor St. Fort Worth, TX 76102

### **BUSINESS AND ECONOMIC DEVELOPMENT PROGRAM**

The Office of Business and Economic Development provides counseling and advice to small, disadvantaged, women owned and minority-owned businesses on contracting opportunities within the National Park Service. This Office is also responsible for assisting the major procurement activities within the National Park Service in their efforts to increase contracting opportunities for such businesses. This applies to direct contracting and subcontracting opportunities as well as the Small Business Administration's Section 8(a) Program.

If you determine that some of the National Park Service's requirements can be fulfilled by your company's products or services, please write to the Business Utilization and Development Specialist at the appropriate procurement office address listed in this document or you may write:

*U.S. Department of the Interior  
National Park Service  
Business and Economic Development Office  
1849 C St. NW  
Washington, D.C. 20240*

## **CONCESSION SERVICES**

The concession program of the National Park Service administers over 630 concession contracts, which serve a spectrum of visitor needs, from food and lodging, river running, to gift shops. The National Park Service develops these contracts, and monitors the performance of concessioners under each contract. Recent figures show that concessioners gross over \$800 million annually, and employ over 25,000 people during peak seasons. For any questions about the National Park Service concession program, please call 202-565-1210.

## **PROFESSIONAL SERVICES—ARCHITECTURAL AND ENGINEERING**

Architectural and engineering work is contracted by the National Park Service Denver Service Center, at the following location. Send SF-254 and brochures to the office listed below for consideration:

*Business Utilization and Development Specialist  
Denver Service Center  
National Park Service  
12795 West Alameda Parkway  
Post Office Box 25287  
Denver, CO 80225*

## **PROFESSIONAL SERVICES—OTHER**

A limited number of other professional services are contracted for by the National Park Service. Send brochures, or information, to the office where you want consideration.

## **INTERPRETIVE DEVICES AND EXHIBITS**

Interpretive films, museum exhibits, audio-visual arts, and other forms of NPS visitor informational products are developed or procured by:

*Harpers Ferry Center  
National Park Service  
Harpers Ferry  
WV 25425  
Attention: Contracting Officer*

## **PHYSICAL IMPROVEMENTS**

The National Park Service is a regular user of general contract work. Contracts are awarded on a competitive basis. Federal Acquisition Regulations apply. Write to the Regional Office indicated on the back for information according to the area of competition.

## **GARAGES, REPAIR SHOPS, AND COMMERCIAL ACTIVITIES**

The National Park Service engages in few purchases of this kind. Vehicles are rented when possible from GSA motor pools. Most supplies are purchased from local distributors.

## **CLOTHING AND UNIFORMS**

A number of NPS employees are required to wear uniforms. These purchases are made under a single Service-wide contract. This contract is competed approximately every five years.

## **NATIONAL RECREATION AND PARK ASSOCIATION**

Products may be exhibited before park and recreation officials during the conventions held by the National Recreation and Park Association. Write to this organization in care of:

*Convention Manager  
2775 South Quincy St. Suite 300  
Arlington, VA 22206*

If you are unable to determine your specific possibilities, please present your case to:

*National Park Service  
Business and Economic Development Office  
P.O. Box 37127  
Washington, D.C. 20013-7127*

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<http://www.nps.gov/legacy/business.html>



- Volunteers in Parks - 90,000
- 

### ***How many people visit the National Parks?***

Total recreation visitors to the National Parks in 1999: 287,130,879

- Visit the [Public Use Statistics](#) for more detailed information.
- 

### ***What is the National Park Service Budget?***

FY 1999 Appropriation - \$1.7 billion

FY 2000 Request - \$2.0 billion

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### ***How do I make reservations for camping/lodging in the National Parks?***

For campground reservations [go here](#). Not all parks participate in this service, many campgrounds are first come, first served. For more information on specific camping and lodging services offered at the park(s) of your interest, please check their homepage by using our "[Visit Your Parks](#)" feature.

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### ***What are concessions?***

There are more than 500 NPS concessionaires which vary in size from small, family-owned businesses to national/international corporations. Concessionaires provide park visitors with lodging, transportation, food services, shops, and other services.

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### ***What is the largest/smallest National Park?***

Largest - [Wrangell-St. Elias National Park and Preserve, AK](#) - 13.2 million

Smallest - [Thaddeus Kosciuszko National Memorial, PA](#) - 0.02

- Current information on acreage is also [available!](#)
- 

### ***What is the origin of the National Park Service Arrowhead?***

The [arrowhead](#) was authorized as the official National Park Service emblem by the Secretary of the Interior on July 20, 1951. The Sequoia tree and bison represent vegetation



## *Frequently Asked Questions About The National Park Service*

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### *Who is the Director of The National Park Service?*

Frances P. Mainella

Learn More about [Past Directors](#) of the National Park Service

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### *What government agency oversees the National Park Service?*

The National Park Service is a bureau of the [Department of the Interior](#). Directly overseeing its operation is the Department's Assistant Secretary for Fish and Wildlife and Parks.

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### *How Old is the System?*

The National Park Service was created by an Act signed by President Woodrow Wilson on August 25, 1916. Yellowstone National Park was established by an Act signed by President Ulysses S. Grant on March 1, 1872, as the Nation's first national park.

View the National Park System [Timeline](#).

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### *How many areas are there in the National Park system?*

The National Park System comprises 384 areas covering more than 83.3 million acres in every state (except Delaware), the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands. These areas include national parks, monuments, battlefields, military parks, historical parks, historic sites, lakeshores, seashores, recreation areas, scenic rivers and trails, and the White House. [Learn More](#) about National Park Designations.

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### *How many employees are in the National Park Service?*

- Employees (permanent) - 15,729
- Temporary and Seasonals - 5,548

# *BUCK ISLAND REEF NATIONAL MONUMENT*

## General Information

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Only National Park Service approved concessionaires are allowed to charge you for a trip to Buck Island. There are no privately sanctioned concessionaires. The following list contains the names, addresses, phone numbers and information about services available.

Big Beard's Adventure Tours P.O.Box 4534 Christiansted, VI 00821 (340) 773-4482	From 25 to 35 passengers.  Sail or motor vessels.	Both half and full day charters available. Offers beach barbecue on a St. Croix beach.
MILE MARK P.O. Box 3619 Christiansted, VI 00821 (340) 773-2628	From 6 to 35 passengers  Sail and motor vessels	Both half & full day trips available. Glass bottom boat for non-swimmers.
Clyde, Inc. P.O.Box 25690 Christiansted, VI 00824 (340) 773-8520	One 6 passenger vessel  Sailboat with motor back-up	"Snowflake" is available for half or full day charters.
"Diva" P.O.Box 3384 Christiansted, VI 0082 (340) 778-4675	One 6 passenger vessel  Sailboat with motor back-up	"Diva" is available for half or full day charters
"Teroro" P.O.Box 2881 Christiansted, VI 00821 (340) 773-3161	One 23 passenger vessel  Sailboat with motor back-up	"Teroro" is available for half or full day charters.
"Charis" P.O.Box 2908 Christiansted, VI 00821 (340) 773-9027	One 6 passenger vessel  Sailboat	"Charis" is available for half or full day charters.

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CONCESSIONAIRE SAFETY

Chapter Number: 24

Chapter Title: Concessionaire Safety

Legal Authority: Public Law 91-596; 29 CFR, part 1910; 29 CFR, part 1926; Federal Acquisition Regulations (FAR) Clause 52.236-13; 36 CFR 4.1; 41 CFR 101-20.002-1; the Construction Safety Act of 1969, as amended; the Service Contract Act of 1965, as amended; the Contract Work Hours and Safety Standards Act (40 USC 333); the Public Buildings Act of 1959, as amended (40 USC 606; see also Public Law 100-678, 1988); DM 485.25.3; 16 USC 3; NPS-48, Chapter 34. (Also see various State regulations, where such States have been designated by the Department of Labor as administrators of the federal program).

Program Objectives: NPS concessionaires have the same legal obligation to provide a safe and healthful work environment as any other business operating in the United States today. Additional Federal laws, contracting regulations and Departmental policy require NPS to provide sufficient administrative oversight to ensure that concessionaires provide adequate public and employee safety and health programs consistent with NPS operating standards.

Enforcement of health and safety codes by NPS officials occurs through a contractual relationship. Poor performance by the concessionaire will generate an unsatisfactory rating which can result in such serious consequences as immediate contract termination and/or non-renewal. Enforcement of health and safety codes by the appropriate Federal or State Department of Labor having jurisdiction, regardless of NPS jurisdiction, can result in monetary fines and criminal charges being levied against concessions managers and/or their companies who disregard employee health and safety.

Bringing concession-operated structures into compliance with safety and health codes can be a very complex matter which often revolves around ownership, possessory interest and contract negotiated repair and maintenance schedule issues. However, this should never deter NPS employees, supervisors or managers from reporting and correcting unsafe or unhealthful conditions whenever they are discovered. By doing so, the necessary corrective actions can be programmed for eventual completion.

Program Requirements: To be considered in full compliance with the requirements of this chapter, all parks engaged in concessions activities should meet these minimum requirements:

- A. Parks should operate their concessions safety program in accordance with the most current provisions of NPS-48, Chapter 34.

- B. Where parks have small operators present, the park's documented safety program should make provisions for the integration of the small operator's safety and health needs.
- C. Park documented safety programs should include a section addressing coordination activities with the concessionaire's documented safety program.
- D. The concessionaire's documented safety program is reviewed by the Regional Safety Manager when operational changes occur or the contract is renewed.

Program Responsibilities:

It is the responsibility of the park Superintendent/unit manager to ensure successful implementation and evaluation of the concessions safety program.

It is the responsibility of the Regional Safety Manager to review established concessionaire documented safety plans when operations change or the contract is renewed.

It is the responsibility of the Regional Concessions Management Specialist, in concert with the Regional Safety Manager, to ensure that concessionaire's documented safety programs are prepared, reviewed and are, in fact, functioning at the site. The Regional Concessions Management Specialist should ensure that the provisions of NPS-48, Chapter 34, are being complied with rigorously within the Region.

It is the responsibility of all NPS and concessions employees to report unsafe acts or conditions discovered in or on any concessions operation immediately to their supervisor.

It is the responsibility of all NPS concessionaires to inspect their operations to discover unsafe acts or conditions and to abate them in accordance with OSHA and NPS regulations. No concessions employee should be restrained, punished or coerced as a result of making a safety complaint to either concessions management, NPS or the appropriate Federal or State OSHA Compliance Division.

PUBLIC SAFETY AND HEALTH

Chapter Number: 22

Chapter Title: Public Safety and Health

Legal Requirements: 39 Stat. 535; 16 U.S.C. 1, NPS Organic Act; 36 CFR, part 2.1-62; 41 CFR Chapter 101-19.002(i); 41 CFR Chapter 101-20.002-1(b); 60 Stat. 842, Federal Tort Claims Act (FTCA); 485 DM 23; ANSI Standard A117.1-1980; NPS-48, Concessions Management Guideline, Chapter 34.

Program Objectives: This chapter specifies the minimum program requirements for protecting the visiting public from recognized hazards related to Department and National Park Service (NPS) facilities or operations.

Program Requirements: The NPS Region and park should establish a public safety program that minimizes the potential for injury, illness, death and/or property damage to the public while they are visiting NPS facilities.

A. Inspecting Workplaces/Facilities for Public Hazards:

- Identification of Hazards- every effort should be made to identify the hazards in the park/area that have caused or have the potential to cause, injury, illness, death or property damage to park visitors.

Consideration should be given to the reasonable level of knowledge of the environment possessed by most visitors in ascertaining loss-producing sources. Do not view the environment in terms of the experienced employee.

Chapter 5 of this guideline will provide details for inspection procedures.

B. Planning each Job with the Public in Mind:

Refer to the chapter on job safety analysis for a detailed reference in identifying hazards in a job whether it be the job itself that is the hazard or the area in which the job is to be performed.

C. Designing, constructing, operating and maintaining facilities to eliminate or control hazards with special consideration to physically impaired:

1. Denver Service Center, and in particular the Safety Engineer, should review plans for newly designed facilities with public safety in mind.
  2. Accessibility standards for physically impaired will be reviewed for each design to comply with aforementioned regulations.
  3. All employees should correct hazards, if possible, when they locate them. When unable to effect corrections, they should notify the proper park authority. A system for reporting hazards should be established in each park.
- D. Emergencies:
1. Employees should be able to impart accurate information to the public about locations, activities, climate, special environmental threats (earthquakes or flash floods etc.), to allow the visitor to make informed decisions about activities while in the park.
  2. Emergency Plans should be prepared by the park and any special information, such as evacuation routes, weather information, etc., should be posted in areas that the public frequently visits.
  3. Employees with expected frequent public contact assignments will have successfully completed a minimum of standard first-aid or its equivalent plus CPR.
- E. First Aid treatment and Transportation - provisions will be made in each area for first aid treatment and initial transportation, if necessary, to medical assistance.
- F. Training - special training, such as hazard recognition, first-aid and CPR, should be provided for those employees responsible for the safety and health of the public.
- G. Educational Materials, Signs, Programs - all areas will provide any special materials, signs and programs to alert the public of potential dangers.
1. Brochures specific to the area should contain safety messages that direct attention to special hazards or attractions that could be potentially hazardous to the visitor.

2. It is encouraged that all interpretive, e.g. campfire, programs should contain a message from the Interpreter/Ranger on any safety matters specific to the area or activity. Keep in mind that children are an ideal target group to get this type of safety message across.
3. The park Safety Officer should review the signing of the park and determine if it is appropriate for the area signed and if it is in good repair. Any signs needing to be replaced or repaired should be brought to the attention of management.
4. Visitor Centers and bulletin boards in campgrounds are an ideal location to keep the public informed of any emergency information or pertinent safety messages. Posters can also be displayed at these locations.
5. Public Service Announcements (PSA) are an excellent method of imparting a message to a target audience such as the local community or a large city. Many area radio and television stations will allow a brief, usually 30 second spot, to promote the local park attraction. Safety can be promoted to a much larger group with the use of PSA.

H. Investigating and Reporting Public Safety Related Accidents:

1. All accidents should be investigated including accidents involving property damage only. The extent of such investigations should reflect the seriousness of the accident or the potential for reoccurrence. See Chapter 6 of this guideline for details on accident investigation.
2. A Board of Inquiry will conduct a thorough review of all public accidents resulting in death while on lands administered by the National Park Service. Procedures for conducting a Board of Inquiry are included in Chapter 6 of this guideline.
3. Reporting of Public Accidents - using the standard DOI forms DI-134 and 134C, Supplemental, all public fatalities and injuries requiring medical treatment and public property damage of \$5,000 or greater, involving the public when using National Park Service facilities or equipment will be reported. Also, accidents occurring involving employees directly or indirectly because of alleged imprudent actions concerned with their work will be reported. When there is a reasonable chance of a tort claim against the United States, the accident will be reported regardless of severity or amount of loss.

Further details on reporting requirements and completion of DI-134 and 134C, Supplemental, forms are included in Chapter 6 of this guideline.

- I. Support of Local Organizations - NPS should support agencies and organizations whose purpose(s) relate to public safety; e.g., National Safety Council, National Association of State Boating Law Administrators and National Water Safety Congress. NPS areas are advised to encourage activities with the local organizations, Girl and Boy Scout troops, school systems and local Chambers of Commerce. These local organizations are an integral part of the communities surrounding the NPS areas and provide effective vehicles for conveying safety messages to the public.

Program Responsibilities:

A. Employees:

1. Are responsible for identifying hazards within NPS areas that may cause injury, illness, death or property damage to park visitors and their property.
2. Should be able to impart accurate information to public about locations, activities, climate and special environmental threats.
3. Are responsible for reporting missing signs, or those that are in need of repair, to the appropriate maintenance supervisor.
4. Are responsible for reporting any visitor accidents/incidents to the appropriate authority in the park/area.

B. Chief Ranger:

1. The Chief Ranger and all rangers within the area are responsible for public/visitor compliance with all resource and safety regulations within the area.
2. Chief Ranger and appropriate Resource Management personnel are responsible for preparation of Emergency Plans and posting of information such as evacuation routes and weather information.
3. A minimum training requirement of first aid and CPR for all Ranger personnel is required. The ranger is also responsible for the initial transportation of injured visitors, if necessary, to medical assistance.

4. The Chief Ranger, or designated member of the ranger staff will be assigned to investigate all visitor accidents/incidents and initiate all related reports required in Chapter 6 of this guideline.

C. Chief Interpreter:

1. The Chief of Interpretation should be responsible for ensuring that all interpretive programs, such as campfire programs, will include an appropriate safety message for the visitors.
2. The Interpretation staff will ensure that all Visitor Centers and bulletin boards in campgrounds are supplied with safety messages or park brochures containing safety messages.

D. Chief of Maintenance:

1. The Chief of Maintenance will be responsible for having all signs in good repair and replaced if missing.
2. The Chief of Maintenance is responsible for identifying those areas that should be constructed to provide access for the physically-impaired and advising management.
3. The Chief of Maintenance will be responsible for assuring that each job assignment will not, in any way, cause injury to the visitor or damage to the visitor's property. All jobs will be reviewed with protection of the public in mind.

E. Park Safety Officer:

1. Is responsible for identification of hazards that have potential to cause injury, illness, death or property damage to park visitors.
2. Should review and assist maintenance in preparing a Job Safety Analysis for any jobs that could be conceived as dangerous to the visitor.
3. Should review and be informed of all emergency plans in place and ensure that evacuation routes and weather information are posted.
4. Should be responsible for identifying any additional signs needed in the park area and advising management and assist in preparation of safety messages to be included in park/area brochures, or interpretive programs.

5. Is responsible for assisting in all investigations of public/visitor accidents/incidents and assuring that all reports meet requirements set forth in Chapter 6 of this guideline. All DI-134s should be forwarded to the Regional Office within 2 days of receiving the report.

F. Superintendent/Park Manager:

1. Will be responsible for establishing a public safety program which should include all of the above-mentioned requirements.
2. Will ensure that training is provided to all personnel in the park/area that are in frequent contact with the visitor. Such training will be in first-aid, CPR, investigation procedures, etc.
3. Will be responsible for management support in all facets of the public safety program and establish a working relationship with all local groups and organizations to promote safety in the community.

CONTRACTOR SAFETY

Chapter Number: 23

Chapter Title: Contractor Safety

Legal Requirements: Public Law 91-596; 29 CFR, part 1910; 29 CFR, part 1926; Federal Acquisition Regulations (FAR) Clause 52.236-13; 36 CFR 4.1; 41 CFR 101-20.002-1; the Construction Safety Act of 1969, as amended; the Service Contract Act of 1965, as amended; the Davis-Bacon Act, 48 CFR, parts 1-53; the Contract Work Hours and Safety Standards Act (40 USC 333); the Public Buildings Act of 1959, as amended (40 USC 606; see also Public Law 100-678, 1988) and DM 485.24.3.

Program Objectives: Any legitimate contractor conducting business in the United States today must provide his or her employees with a safe and healthful working environment, as guaranteed by the OSH Act of 1970. Regardless of where this work is performed, even on Federal facilities such as NPS parks, the appropriate Federal or State OSHA agency having geographical jurisdiction can, and should, inspect and cite businesses for violations.

Businesses do not leave safety and health responsibilities "at the door" when they accept contract work from NPS. In fact, other Federal laws and procurement regulations have placed additional health and safety responsibilities not only on businesses who accept Government funds, but also on NPS to ensure that these contractors are meeting the health and safety codes.

Federal and State OSHA officials will assess civil fines and criminal penalties against NPS contractors who violate health and safety regulations. The type of enforcement action taken will depend upon the gravity of the violation. NPS management can assess contractual penalties against NPS contractors who violate health and safety regulations. These penalties can range from stop-work orders to disbarment of the contractor from any future Federal contracting.

Park Safety Officers cannot take a direct enforcement action against an NPS contractor for safety and health violations. The park Safety Officer should call violations to the attention of either the contracting officer or the contracting officer's technical representative (COTR) on the project. It is the responsibility of the contracting officer or the COTR to ensure that the contractor comes into compliance.

Failure on the part of the contractor to come into compliance with health and safety codes on the NPS project site is a breach of contract and must be treated accordingly. Failure of the contracting officer, COTR, the park Superintendent and the park Safety Officer to seek compliance and take the necessary actions to achieve resolution constitutes a violation of Federal law, Departmental regulations and NPS policy.

Program Requirements: To be considered in full compliance with the requirements of this chapter, the following steps must be completed and documented for all contracting activity.

- A. When considering any type of contracting work within the park or operating unit, the NPS employee proposing the project should consult with the appropriate Safety Officer, Safety Engineer or Safety Manager. During this initial meeting, they should discuss any special safety requirements, above and beyond the existing Federal or State safety and health codes, that must be written into the contract specifications as part of the bidding process (a special condition). The Safety Officer should review the appropriate safety and health clauses from the FAR. Further, the work-unit's requirements for the preparation, submission and on-site implementation/coordination of the contractor's own documented safety plan should be detailed clearly in the proposed statement of work.
- B. The contracting officer and the COTR should secure the work unit Safety Officers surname on all proposed statements of work and bidding packages before advertisement, signifying that all appropriate safety and health clauses and special conditions are contained in the bidding package.
- C. The appropriate work-unit Safety Officer should be asked to evaluate all contractor documented safety plans submitted as part of any proposal for completeness and competency. The contracting officer and the COTR should consider the previous safety record of all responsive bidders in the award of the contract itself.
- D. The appropriate work-unit Safety Officer should participate in any pre-award conferences or meetings held with prospective contractors to answer any questions they may have concerning health and safety code compliance on the job site.
- E. After the contract is awarded, but before any contract work should begin, a meeting should be held between the contracting officer, the COTR, the work-unit Safety Officer and the contractor.

The Safety Officer should orient the contractor to the work-unit's own documented safety plan and discuss the work-unit's expectations for contractor safety and health. On-site coordination and inspection matters will be addressed. The contractor should present his own documented safety plan. Minutes of this meeting should be kept and placed in the appropriate Safety Officer's files. Copies should be sent to all parties.

- F. The COTR, or the on-site representative of the government, should perform periodic informal safety and health inspections of the worksite, at least daily. Formal inspections involving both representatives of the contractor, as well as the work-unit Safety Officer should be conducted according to the schedule agreed to initially. Sufficient unannounced formal inspections should be conducted to determine compliance.
- G. When hazards or violations are identified, the contractor should be provided by the contracting officer with a written listing of the violation, a proposed abatement and a date for correction. It should be the responsibility of the COTR and the contracting officer to ensure compliance is achieved. The work-unit Safety Officer should provide technical assistance to all parties, at any time. Written copies of all hazards identified and abated should be kept as part of the project file on site and be available at reasonable times for inspection.
- H. In the case of an imminent danger, the park Safety Officer will inform the affected employees and official in charge of the workplace of the danger. The official in charge of the workplace, or a person empowered to act for that official, will undertake immediate abatement and the withdrawal of employees who are not necessary for abatement of the dangerous conditions. The park Safety Officer will immediately notify the contracting officer or COTR of the imminent danger and propose an abatement plan. The contracting officer and the COTR should undertake the necessary discussions with the contractor to correct the situation.
- I. The work-unit Safety Officer should discuss the contractor's safety record with the worksite manager (park Superintendent) at the quarterly status meeting.
- J. Prior to final acceptance of any contractor work/product, the Safety Officer should certify that the facility, structure, grounds, etc., are fit for occupancy and meet all health and safety codes.

- K. The work-unit Safety Officer should be provided with copies of manufacturer's specifications, warranties and operating instructions for all safety systems installed as part of the project. Such documentation must be provided before final payment is authorized by the contracting officer.

Program Responsibilities:

- A. Initiating Employee - any employee proposing work to be performed by a contracting entity must ensure proper communication and involvement of the appropriate Safety Officer, Safety Engineer or Safety Manager early in the developmental stages of the statement of work.
- B. Contracting Officer must:
1. Secure appropriate Safety Officer's surname on all bid packages prior to announcement, certifying all safety clauses (FAR, as well as special conditions), have been included.
  2. Seek participation of Safety Officer in an pre-award meetings or briefings.
  3. Consider Safety Officer's rating of all responsive bidders' documented safety plans in the award of contract.
  4. Meet with COTR, Safety Officer and contractor to discuss worksite safety before authorizing work to begin.
  5. Transmit notices of unsafe or unhealthful conditions to contractor and ensure that corrective action is taken within established timeframe.
  6. Check to see all manufacturer's specifications, operations manuals or other safety data has been provided to Safety Officer before certifying final payment.
  7. Receive certification of occupancy from Safety Officer before releasing contractor and facility for use.
- C. Contracting Officer's Technical Representative must:
1. Secure involvement of appropriate Safety Officer in early stages of project design.
  2. Secure Safety Officer's surname on all pre-bid packages.

3. Meet with contracting officer, Safety Officer and contractor to review safety plans and communication.
  4. Informally inspect worksite daily, calling to the attention of the contracting officer all unsafe or unhealthful conditions present.
  5. Assist contracting officer in ensuring corrective action is undertaken to rectify safety problems within timeframe established.
  6. Accompany Safety Officer on formal inspections, both announced and unannounced.
  7. Provide Safety Officer with copies of all technical data for any safety systems installed.
- D. Park Superintendent/Unit Manager must:
1. Review contractor's safety record at least quarterly with Safety Officer.
  2. Ensure contracting safety program is conducted in accordance with this chapter.
- E. Safety Officer, Safety Engineer and Safety Manager must:
1. Provide technical assistance to contracting officer, the contracting officer's technical representative and project author in administration and enforcement of appropriate safety and health codes.
  2. Surname all bidding packages to certify compliance with safety and health codes.
  3. Review all contractor documented safety plans for completeness and competency.
  4. Orient contractor to worksite's documented safety plan before work begins.
  5. Conduct periodic formal inspections of the worksite, both announced and unannounced.
- F. Contractor must:
1. Provide a safe and healthful workplace for all employees while on NPS site.

2. Provide a level of public safety commensurate with exposure at NPS worksite.
3. Comply in rectifying all unsafe or unhealthful conditions called to his attention by the contracting officer.
4. Allow for both informal and formal, announced and unannounced safety inspections by the COTR and the appropriate Safety Officer at the worksite.
5. Submit an acceptable documented safety plan before beginning work.

OFF-THE-JOB SAFETY

Chapter Number: 25

Chapter Title: Off-the-Job Safety

Legal Requirements: 485 DM 26

Program Objectives: This chapter encourages sites to promote off-the-job safety for employees and their dependents and provides examples of implementation.

Program Requirements: To be in full compliance with this chapter, each NPS worksite should:

- A. Conduct on-the-job safety and health activities to encourage employees and their dependents to be safe off-the-job.
- B. Provide and maintain an employee bulletin board area where off-the-job safety information can be posted. Resource information for subject matter can be obtained from local public health agencies, American Red Cross, American Heart Association, National Safety Council and other organizations concerned with health and safety issues.
- C. Stress the element of off-the-job safety and health issues in all occupational safety and health training courses sponsored throughout the Service.
- D. Conduct promotional campaigns, e.g., seat-belt use, fire prevention can be coordinated with National safety/health campaigns like the National Fire Prevention Week (first week in September) and the National Safe Boating Week (first week in June). Campaigns can involve dependent children by organizing contest of safety/health posters by dependent children. Winners can have their entrant displayed on a visitor bulletin board.
- E. Encourage employees and their dependents to participate in health and fitness activities. Employees and their dependents can be encouraged to participate in community- or health organization sponsored Wellness Diagnostic Clinics.

Program Responsibilities:

The Chief, Branch of Loss Control Management, WASO, should be responsible for developing a yearly calendar of "Off-the-Job Safety" topics and for distributing them to Regional Safety Managers.

The Regional Safety Manager should be responsible for forwarding "Off-the-Job Safety" topics to all NPS operating units and for ensuring that the Region's and parks' safety programs include off-the-job promotional activities.

The Park Safety Officer should be responsible for developing off-the-job safety programs cooperatively with the park's safety committee, and for ensuring that supervisors and managers are provided with promotional materials to assist them in this effort.

Employees are charged with participating in any off-the-job safety programs established at the workunit and encouraging safe work practices in the home.

Suggested Schedule for Off-the-Job Safety  
Promotional Activities

February: American Heart Month  
National Child Passenger Safety Awareness Week  
(second week of the month)

March: Save Your Vision Week (first week of the month)  
National Poison Prevention Week (third week of the month)

April: World Health Week (second week of the month)

May: Safe Kids Week (second week of the month)  
Buckle Up, America! (third week of the month)

June: National Safe Boating Week (first week of the month)  
National Safety Week (last week of the month)

September: National Farm Safety Week (third week of the month)

October: National Fire Prevention Week (second week of the month)

December: National Drunk Driving Awareness Week (second week of the month)

TORT CLAIMS

Chapter Number: 26

Chapter Title: Tort Claims

Legal Requirements: 60 Stat. 842, The Federal Tort Claims Act (FTCA); 28 U.S.C. secs. 2671-2680; 28 U.S.C. 1346(b) and 1402(b); 28 U.S.C. 2401(b); 28 U.S.C. 2414; 28 U.S.C. 1291; 31 U.S.C. 724a; 28 U.S.C. sec. 1504; 28 CFR 14; 43 CFR 22; 210 DM 2.2A(1); 451 DM 1-4, Tort Claims Procedures; 111 DM 2; 31 U.S.C. 240-243, Military Personnel and Civilian Employees' Claim Act of 1964; Public Law 100-694, Federal Employee Liability Reform and Labor Compensation Act of 1988; 43 CFR, part 22.1-6(e).

Program Objectives:

The objective of this chapter is to provide NPS personnel with guidance on the processing of tort claims and employee claims for damages and loss of personal property. This is not meant to be an all-inclusive discussion of this subject nor is it meant to serve as the definitive test. Please consult with your park or Regional Tort Claims Officer.

There are several legal definitions provided, which may be of benefit in understanding the objectives and requirements of this program.

Tort (a private or civil wrong or injury) - a violation of a right not arising out of a contract. It may be either (a) a direct invasion of some legal right of the individual, (b) the infraction of some public duty by which special damage accrues to the individual, or (c) the violation of some private obligation by which like damage accrues to the individual. (NPS torts usually deal with negligence and accidents).

Constitutional Tort or "Bivens" Action - this type of claim or civil action results from an alleged violation of the Constitutional rights of the claimant or plaintiff by an employee under the color of law. Generally, claims and suits of this type result from a law enforcement action by a Ranger or Park Police Officer. Demands for payment of alleged damages often are made in the employee's official and personal capacities and against the Government. The Regional Tort Claims Officer and the Field Solicitor should be immediately notified when a claim or suit of this type is received.

Negligence - failure to exercise that degree of care which an ordinarily careful and prudent person would exercise under similar circumstances. To establish a proper claim of negligence, however, there must be (a) a legal duty to use care, (b) a breach of that duty, and (c) injury or damage.

Degree of Care - the degree of attention, caution, concern, diligence, discretion, prudence or watchfulness depends upon the circumstances. For example, a high degree of care is demanded from people who invite others onto their premises, by formal, verbal or implied invitation. All sales and services enterprises must exercise a high degree of care for the safety of their patrons. As long as a business is open, it assumes a responsibility to its clientele.

Burden of Proof - the injured party must prove his injury or damage and its relation to the accident. The defense, on the other hand, must prove it is without fault. Proof must be established by facts, not opinion, suspicion, rumor, hearsay, gossip or emotional reaction. Proof is the conclusion drawn from the evidence.

Honest and sincere witnesses convey different impressions from the same evidence attested to by dishonest witnesses. Thus, we see how important promptness is when assembling and preserving the evidence. Signed statements taken shortly after the accident or an all-important photograph can often make the big difference. In public liability claims, the onus of proof rests upon the plaintiff (claimant).

Program Requirements:

A. Who May File a Tort Claim Against the Government?

A person who has a claim under the FTCA must first file his/her claim with NPS and may not file suit prior to utilizing administrative remedies. This provision is a statutory restatement of the well-established doctrine of "Exhaustion of Administrative Remedy" as a necessary condition precedent to filing of suit regardless of the amount of damages claimed.

The following persons may file a claim:

1. A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent or legal representative.
2. A claim for personal injury may be presented by the injured person, his duly authorized agent or legal representative.

3. A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim in accordance with applicable state law.
4. A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.
5. A claim presented by an agent or legal representative should be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.
6. Government employees may file claims under the FTCA for off-duty personal injury or for damage to their personal property if such damage is caused by a negligent act or omission of other employees of the United States acting within the scope of their employment. The Federal Employees Compensation Act provides the exclusive remedy for claims for personal injury in the course of employment.

Government employees may file a claim (for property damage or loss) by virtue of the Military Personnel and Civilian Employees' Claim Act of 1964 (31 U.S.C. secs. 240-243).

B. Procedures

The procedure for filing claims with the Department of the Interior is set forth in Part 22 of Title 43 of the Code of Federal Regulations and the Departmental Manual, Part 451.1.

Claims are usually initiated through the Superintendent of the area where the accident or incident occurred. In some cases the desire to file a claim is made directly to the investigating ranger or through Regional Staff.

In any case, the appropriate forms, SF-95 (Claim for Damage, Injury or Death) or DI-570 (Employee Claim for Damage to Personal Property), copies of these forms are in Appendix 26-1 and 26-2 should be provided when requested or when a person states a desire to file a claim, or when he or she expresses the opinion that some compensation should be made. Such forms should not be volunteered as a matter of routine.

A claim must be filed within 2 years after the accident or incident occurs giving rise to such a claim.

Regulations require that the claimant's envelope must be retained and claim form must be time and date stamped. This is essential as it may be important later with respect to time limitations.

The claimant cannot initiate an action in the United States District Court until either the claim has been denied in writing by the Field Solicitor or the Field Solicitor has failed to make a final disposition of the claim within 6 months after it was received by the NPS.

An administrative claim must be filed for a "sum certain." Subsequent suit is limited to the amount administratively claimed barring newly discovered evidence or proof of intervening facts relating to the amount of the claim.

Tort claims and all pertinent investigative files are forwarded to the Field Solicitor through the park Superintendent and the Regional Tort Claims Officer where the incident giving rise to the claim occurred. Area supervisors and park managers do not have the authority to make administrative determinations regarding tort claims or employee claims nor a determination as to whether the claimant has a basis for a claim. The determinations can be made only by the Regional Field Solicitor or other individuals delegated the authority.

- C. Investigation - it is vital that a complete investigation and documentation be made by field personnel of all accidents or incidents that may be lead to a tort claim.

The following points should always be considered by the field personnel when conducting an investigation into an accident or incident that may lead to a tort claim:

1. Date, time, exact location.
2. Concise but complete statement of facts, including names and addresses of all witnesses.
3. Signed, if possible, statements and admissions of persons involved and witnesses.
4. Information as to whether a law or regulation was violated, whether a violation notice was issued and court judgment, if possible.

5. Description of property damage or personal injury.
  6. Weather or facility condition (natural phenomena), visibility, slippery, size of step, loose gravel, etc.
  7. Diagram of the scene depicting all pertinent facts.
  8. Photographs of all pertinent facts, including environmental conditions (taken as soon as possible after the incident), damage to property, pertinent signs, land marks, size references, etc. Data regarding photographs (date, name of photographer, direction of view, time, etc.) should be written on a separate paper and attached with tape to the back of the photographs.
  9. Do not document any opinions about NPS negligence.
  10. Copies or photographs of all signs, handouts or other devices used to warn of hazardous conditions - and documentation concerning access to these devices by the victim (potential claimant).
- D. Administrative Determination of Tort Claims - administrative determination as to the merit of any tort/employee claim presented is a function delegated to the Solicitor and he may designate other persons to perform this function. Upon the receipt of the claim and the pertinent investigative reports, the Solicitor's Office/or designee will make a determination of the claim. All evidence in the administrative record will be considered including that submitted by the claimant and that documented by the investigation conducted by the Government. If the evidence presented by the plaintiff (claimant) is more convincing than that offered by the Government -- in other words, if the plaintiff proves his case by a "preponderance of the evidence"--the plaintiff wins. This determination by the Solicitor's Office may either deny, dismiss, compromise or pay in full the sum originally claimed.
- E. Denial of Claim - if the administrative determination offers the claimant less than the amount claimed, dismisses or denies the claim completely, the Solicitor must give written notice. This notice must further advise the claimant that if he is dissatisfied with the Agency's decision on the merits of the claim, he is entitled to:
1. Request reconsideration of the denial within 30 days after the date of the mailing of the determination letter; or

2. Institute suit in Federal District Court. Such suit must be initiated within a period of 6 months from the date of the mailing of the determination.
- F. Payment of Awards - any award, compromise or settlement of a tort claim in an amount of \$2,500 or less should be paid by the park/area where the incident occurred.

Payment of any administrative award, compromise or settlement of a tort claim in an amount in excess of \$2,500 will be paid from the Treasury, through the General Accounting Office, after certification for payment is issued by the Office of the Solicitor.

Any award, compromise or settlement of an employee claim in any amount is paid by the benefitting park/office account.

Acceptance of an award or entry of judgment is a complete release of the United States and its employees from any further claim by the same party based on the same accident or incident.

Program Responsibilities:

- A. Role of Park Tort Claims Officer - the Superintendent of each park unit should designate an individual to serve as Tort Claims Officer for that park to perform the following tasks:
1. Provide investigative assistance on tort claim matters.
  2. Assure the prompt and full investigation of incidents which may result in tort claims against the Government prior to the filing of a claim.
  3. Fully investigate the merits of all claims received including recommendations in the final report forwarded to the Solicitor.
  4. Represent the Superintendent in all communications concerning a tort claim, if so delegated.
- B. Role of Regional Tort Claims Officer - the Regional Director designates the individual to handle the claims process and to perform the following:
1. Provide investigative assistance and review investigations and reports and recommendations from the field.
  2. Provides liaison between the park/area and the Solicitor's Office.

3. Coordinates and assists both the U.S. Attorney's Office and Field Solicitor on those civil actions arising from tort claims.
  4. Should be responsible for handling employee claims for the Region with assistance from park/area. Documentation for these employee claims is generally at the Regional Office and makes accessibility more expedient to the Regional Tort Claims Officer.
  5. Responsible for providing the Washington Office, Branch of Loss Control Management, the quarterly Tort Claims Report, which provides statistical information on those claims settled within the quarter.
- C. Role of the WASO Branch of Loss Control Management - the Branch of Loss Control Management is responsible for compiling the statistical data for the NPS on all tort claims processed. The data is compiled and sent to the Departmental Office of Safety and Health as required by 485 DM. WASO maintains a database with all submitted statistical information from the Regions on the processed tort claims. Quarterly reports of the composite data are forwarded to the Regional Safety Managers for their information.

WASO is responsible for transmitting to the appropriate Region all correspondence relative to claims against the Government that may be received directly from claimants or their representatives.

WASO provides NPS management with Servicewide statistics on tort claims processed during the fiscal year. This information is used in computing direct costs to the Government.

QUESTION(S) AND ANSWER(S):

- A. Can I be sued? - the following discussion is excerpted from a memorandum, dated January 10, 1989, signed by the General Counsel, Office of Personnel Management, which is relative to the Federal Employee Liability Reform and Tort Compensation Act of 1988:

"...The new law, signed by President Reagan on November 18, 1988, provides Federal employees with greatly expanded protection from job-related lawsuits for actions they took or failed to take within the scope of their employment. The law substitutes the United States as the defendant in common law tort actions against Federal employees and provides an exclusive remedy against the United States under the FTCA for suits based

on certain negligent or wrongful acts or omissions of Federal workers within the scope of their employment."

**Department of the Interior**  
**Departmental Manual**

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**Series:** Safety Management

**Part 485:** Safety and Occupational Health Program

**Chapter 25:** Concessionaire Safety and Health

**Originating Office:** Office of Managing Risk and Public Safety

**485 DM 25**

**25.1 Purpose.** To specify the minimum Safety and Occupational Health Program (Program) requirements for preparing and enforcing contract clauses which define the Department's requirements for concessionaires with regard to their reasonable protection of the public and property from accidents which are within their control.

**25.2 References.**

- A. 29 CFR 1910, Occupational Safety and Health Administration (OSHA) General Industry Standards.
- B. 29 CFR 1926, OSHA Construction Standards.
- C. Federal, State and local regulations.

**25.3 Requirements.**

- A. Each bureau establishing contracts with concessionaires will include applicable safety and health requirements for protecting the public and Departmental personnel in the contracts.
- B. Each bureau, as appropriate, will monitor and review inspections, educational and other programs conducted by concessionaires for the safety and health of their employees and the public.

3/12/99 #3255

Replaces 6/10/91 #485A-1

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## **Parks**

Individual parks are often in the best position to understand, solicit, and act upon the educational or other youth needs of youth in their surrounding community. Parks are responsible for the following:

- Appropriately publicize opportunities and accomplishments of youth programs in the park.
- Determine local community and park needs where youth education and training are concerned.
- Incorporate youth programs with park planning and resource protection goals.
- Provide volunteer or job opportunities to youth that will allow them to gain job skills and experience while teaching preservation values.
- Ensure that all applicable Department of Labor and OSHA Safety regulations and requirements are followed, all applicable age restrictions relating to the operation of machinery or equipment are enforced, and any required parental approvals are obtained.
- Document and properly evaluate youth programs. Keep accurate records of all work accomplished in accordance with program requirements.
- Supervise all youth programs taking place within the boundaries of their respective parks.
- Actively seek partnerships with friends groups, non-profit organizations and other organizations interested in collaborating to introduce youth to the national parks.
- Actively promote diversity by seeking opportunities to recruit youth from underrepresented populations.
- Ensure that each young adult participating in a youth program is familiar with the rules and guidelines pertaining to behavior while working in a NPS youth program. Have an effective plan of response in case a young person is hurt or becomes ill while they are participating in a program. Inform parents and other entities that share responsibility for the youth's participation in the program about all matters pertaining to health coverage and Government liability.

## **DIRECTOR'S ORDER #26: Youth Programs**

**Approved:** Fran P. Mainella, Director

**Effective Date:** November 8, 2002

**Sunset Date:** November 8, 2006

### **Contents:**

- I. Purpose and Background
- II. Authority to Issue this Director's Order
- III. Youth Program Objectives
- IV. Program Descriptions
  - A. National Youth Programs
  - B. Education Programs
  - C. Partnerships and Funding
- V. Responsibilities
  - A. WASO Youth Programs Division
  - B. Regional Offices
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- VI. Further References
  - A. Reference Manual 26
  - B. Director's Orders
  - C. Websites

## 2001 NPS Management Policies

### Chapter 10: Commercial Visitor Services

The National Park Service will provide, through the use of concession contracts, commercial visitor services parks that are necessary and appropriate for visitor use and enjoyment. Concession operations will be consistent with the protection of park resources and values and demonstrate sound environmental management and stewardship.

Public accommodations, facilities, and services must be consistent to the highest practicable degree with the preservation and conservation of park resources and values.

#### 10.1 General

Commercial visitor services will be authorized through concession contracts or commercial use authorizations, unless otherwise provided by law. Section 10.2 addresses concession authorizations. Section 10.3 addresses commercial use authorizations.

*(Also see Director's Orders #48A: Concessions Management, and #48B: Commercial Use Authorizations)*

#### 10.2 Concessions

##### 10.2.1 Concession Policies

Concession operations are subject to the provisions of the National Park Service Concessions Management Improvement Act of 1998; National Park Service regulations published at 36 CFR Part 51; this chapter of NPS Management Policies; and Director's Order #89A: Concession Management, and other specific guidance that may be issued under the Director's authority.

##### 10.2.2 Commercial Visitor Services Planning

Commercial visitor services planning will identify the appropriate role of commercial operations in helping parks to achieve desired visitor experiences, and will be integrated into other plans and planning processes.

Concession management plans or commercial services plans will support a park's purpose and significance, exceptional resource values, and visitor experience objectives, and will be consistent with enabling legislation. These plans will also determine whether proposed concession facilities and services are necessary and appropriate, and will consider alternatives. Proposed concession operations must be economically feasible and generally supported by a feasibility study prepared by a qualified individual.

Any concession facilities improvement program, or any service authorized in a concession contract, will be in conformance with the appropriate approved plan( s) for the area being considered. A decision to authorize a park concession will be based on a determination that the facility or service:

- Is necessary and appropriate for the public use and enjoyment of the park in which it is located, and identified needs are not, nor can they be, met outside park boundaries;
- Will be provided in a manner that furthers the protection, conservation, and preservation of the environment, and park resources and values;
- Incorporates sustainable principles and practices in planning, design, siting, construction, utility systems, selection and recycling of building materials, and waste management; and
- Will enhance visitor use and enjoyment of the park without causing unacceptable impacts to park resources or values.

The number, location, and sizes of sites assigned for necessary facilities will be the minimum necessary for

proper and satisfactory operation of the facilities, emphasizing compatibility of design; preservation of esthetic values, and natural and cultural resources; and integration of sustainable design concepts.

For information about leasing historic structures for concession purposes, see Director's Order #38: Real Property Leasing.

### 10.2.3 Concession Contracting

Approved standard contract language will be used in all National Park Service concession contracts.

#### 10.2.3.1 Terms and Conditions of Contracts

Concession services will be authorized under concession contracts, unless otherwise authorized by law. The term of a concession contract will generally be 10 years or less. However, the Director may award a contract for a term of up to 20 years if the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. In this regard, the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection, visitor needs, and other factors that the Director may deem appropriate.

#### 10.2.3.2 Modifications

Concession contracts may be modified only by written amendment. Amendments developed after the issuance of a concession contract must be consistent with current National Park Service policies and orders. Unless otherwise authorized by the contract, a concession contract may be amended to provide additional visitor services only if the services are minor and comprise a reasonable extension of the existing services.

#### 10.2.3.3 Extension

Concession contracts may be extended only in accordance with the requirements of 36 CFR Part 51, subpart D. The signature authority for contract extensions or amendments must be consistent with delegations of authority from the Director.

#### 10.2.3.4 Competition

In order to obtain the best service provider and maximize benefits to the government, the National Park Service encourages competition in the awarding of concession contracts. The National Park Service also encourages, through outreach, the participation of American Indian, minority and womenowned businesses when new business activities occur.

#### 10.2.3.5 Third-party Agreements and Sub-concessions

Unless specified in the contract, sub- concession or other thirdparty agreements, including management agreements, for the provision of visitor services that are required and/ or authorized under concession contracts are not permitted. The NPS may also advertise for a new concession contract to provide these additional services.

#### 10.2.3.6 Multi- park Contracts

Concessioners operating in more than one park unit must have separate contracts for each park unit. An exception may be made in the case of those park units having common National Park Service management or where service is provided in contiguous park areas (for example, a pack trip that crosses the boundary of two adjoining parks).

#### 10.2.3.7 Termination

The Service may terminate concession contracts for default and under any other circumstances specified in the

concession contract.

## 10.2.4 Concession Operations

### 10.2.4.1 Operating Plans

The operating plan is an exhibit to the concession contract, and will describe operative responsibilities authorized in the contract between the concessioner and the NPS. The plan is reviewed and updated annually by the Service, in accordance with the terms of the contract. Operating plans are considered an integral part of a concessioner's contractual performance compliance.

### 10.2.4.2 Service Type and Quality

It is the objective of the National Park Service that park visitors be provided with high- quality facilities and services. Where appropriate, the concession contract will specify a range of facility, accommodation, and service types that are to be provided at reasonable rates.

### 10.2.4.3 Evaluation of Concession Operations

Concession operations will be evaluated to ensure that park visitors are provided with high- quality services and facilities, which are safe and sanitary, and meet National Park Service environmental, health, safety, and operational standards. As outlined in the Concessioner Operational Evaluation Program, the evaluation results provide a basis for NPS management to determine whether to continue or terminate a concession contract, and whether a concessioner is eligible to exercise a right of preference in the award of a qualified new concession contract.

### 10.2.4.4 Interpretation by Concessioners

Concessioners will be encouraged to train their employees and, through their facilities and services, to instill in their guests an appreciation of the park, its purpose and significance, its proper and sustainable management, and the stewardship of its resources. When the provision of interpretive services is required by the contract, concessioners will provide formal interpretive training for their employees, or will participate in formal interpretive training that is either offered by the NPS or co- sponsored by the concessioner.

Instilling appreciation of the park in visitors can be accomplished in many ways. For example, it can be accomplished through guided activities; the design, architecture, landscape, and decor of facilities; educational programs; interpretive menu design and menu offerings; and involvement in the park's overall interpretive program. Gift shop merchandise and displays also present opportunities to educate visitors about park history; natural, cultural, and historical resources; and sustainable environmental management.

Concession contracts will require the concessioner to provide all visitor services in a manner that is consistent with, and supportive of, the interpretive themes, goals, and objectives articulated in each park's planning documents, mission statement, and/ or interpretive prospectus.

*(See Chapter 7: Interpretation and Education)*

### 10.2.4.5 Merchandise

The National Park Service will approve the nature, type, and quality of merchandise to be offered by concessioners. Although there is no Service- wide list of specific preferred merchandise, priority will be given to those sale items that interpret, and foster awareness and understanding of, the park and its resources. Merchandise should have interpretive labeling, or include other information to indicate how the merchandise is relevant to the park's interpretive theme( s).

Each park with concession activities will have a gift shop mission statement, based on the park's concession service plan or GMP. Concessioners will develop and implement a merchandise plan based on the park's gift-shop mission statement. The merchandise plan must be satisfactory to the Director, and should ensure that

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merchandise sold or provided reflects the significance of the park, and promotes the conservation of the park's geology; wildlife; plantlife; archeology; local Native American culture; local ethnic culture; historical significance; and other park resources and values. The plan should also integrate pollution prevention and waste-reduction objectives and strategies for merchandise.

Merchandise must be available at a range of prices. Theme-related merchandise manufactured or handcrafted in the United States— particularly in a park's geographic vicinity— will be emphasized. The revenue derived from the sale of United States Indian, Alaska native, native Samoan, and native Hawaiian handcrafts is exempt from any franchise fee payments. Foreign merchandise is not encouraged, but will not be prohibited.

#### 10.2.4.6 Artifacts and Specimens

Concessioners will not be permitted to sell any merchandise in violation of laws, regulations, or National Park Service policies. Some merchandise may be determined by the park superintendent to be locally sensitive or inappropriate for sale, and may, at the discretion of the superintendent, be prohibited for retail sale. The sale of original objects, artifacts, or specimens of a historic, archeological, paleontological, or biological nature is prohibited. Replicated historic, archeological, paleontological, or biological objects, artifacts, or specimens may be sold if they are obvious replicas and clearly labeled.

Any geological merchandise that is approved for sale or exhibit by concessioners must be accompanied by appropriate educational material and a written disclaimer clearly stating that such items were not obtained from inside park boundaries. The proposed sale of any replicas, or of geological merchandise, must be addressed in the gift shop merchandise plan.

#### 10.2.4.7 Rates

The National Park Service must approve all rates charged to visitors by concessioners. The reasonableness of a concessioner's rates and charges to the public will, unless otherwise provided in the contract, be judged primarily on the basis of comparison with current rates and charges for facilities and services of comparable character under similar conditions. Due consideration will be given to length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Director.

#### 10.2.4.8 Risk Management Program

Concession contracts require each concessioner to develop a risk management program, which is approved by the superintendent, and is in accord with the Occupational Safety and Health Act and the National Park Service Concession Risk Management Program.

Concessioners are responsible for managing all of their operations in a manner that minimizes risk and controls loss due to accident, illness, or injury. To ensure compliance, the Service will include a risk management evaluation as part of its standard operational review of concession operations.

#### 10.2.4.9 Natural and Cultural Resource Management Requirements

Concessioners are required to comply with applicable provisions of all laws, regulations, and policies that apply to natural and cultural resource protection. The use, maintenance, repair, rehabilitation, restoration, or other modification of concession facilities that are listed on or eligible for the National Register of Historic Places are subject to the applicable provisions of all laws, Executive orders, regulations, and policies pertaining to cultural properties.

The National Park Service will assist concessioners in understanding and complying with regulations for the protection of historic properties (36 CFR Part 800) promulgated by the Advisory Council on Historic Preservation. Historic structures and their contents and museum objects that are in the control of concessioners will be treated in accordance with the appropriate standards contained in National Park Service guidance documents.

*(See Chapter 4, Natural Resource Management; Use of Historic Structures 5.3.5.4.7. Also see Reference Manual*

*24: the Museum Handbook, and 28: the Cultural Resource Management Guideline; Director's Order #38: Real Property Leasing, and #48A: Concessions Management)*

#### 10.2.4.10 Environmental Program Requirements

In the operation of visitor services, concessioners will be required by contract to meet environmental compliance objectives by:

- Complying with all applicable laws pertaining to the protection of human health and the environment; and
- Incorporating best management practices (BMPs) in all operations, construction, maintenance, acquisition, provision of visitor services, and other activities under the contract.

Concessioners will be required by contract to develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive, written environmental management program (EMP) to achieve environmental management objectives. The EMP must be updated at least annually, and must be approved by the Director.

The EMP must account for all activities with potential environmental impacts conducted by the concessioner, or to which the concessioner contributes. The scope and complexity of the EMP may vary based on the type, size, and number of concessioner activities.

Superintendents are encouraged to require the EMP to be submitted as part of the prospectus package. The National Park Service will review concessioner compliance with the EMP under the contract. The National Park Service will also conduct environmental compliance audits of all commercial visitor services at least every three years in accordance with the concessions environmental audit program. The concessioner will be responsible for corrective actions required by law, and identified during the environmental compliance audits.

The National Park Service will assist concessioners in understanding environmental program requirements, and will also include an environmental management evaluation as part of its annual standard operational reviews of concession operations.

*(See Compensation for Injuries to Natural Resources 4.1.6; Compensation for Damages 5.3.1.3; Integrated Pest Management Program 4.4.5.2; Overnight Accommodations and Food Services 9.3.2. Also see Director's Order #83: Public Health)*

#### 10.2.4.11 Insurance

Concession contracts will identify the types and minimum amounts of insurance coverage required of concessioners in order to:

- provide reasonable assurance that concessioners have the ability to cover bona fide claims for bodily injury, death, or property damage arising from an action or omission of the operator;
- protect the government against potential liability protect the government against potential liability for claims based on the negligence of the operators; and
- enable rapid repair or replacement of essential visitor facilities located on park lands that are damaged or destroyed by fire or other hazards.

Concessioners will not be permitted to operate without liability insurance. Under limited conditions, concessioners may operate without property insurance, as described in Director's Order #48A: Concession Management.

#### 10.2.4.12 Food Service Sanitation Inspections

Concessioners who prepare food on or off park lands, or serve food on park lands will be subject to inspection for

compliance with all applicable health and sanitation requirements of local and state agencies, the U. S. Public Health Service, and the Food and Drug Administration.

*(Also see Director's Order #83: Public Health)*

#### 10.2.4.13 Smoking

Generally, all NPS concession facilities will be smoke free. The only exceptions will be specifically designated smoking areas and rooms. The sale of tobacco products through vending machines is prohibited.

*(See Executive Order 13058 (Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace))*

#### 10.2.5 Concessions Financial Management

Concession contracts must provide for payment to the government of a franchise fee, or 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 will 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 is subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

##### 10.2.5.1 Franchise Fees

The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession contract must be specified in the concession contract and may only be modified to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the contract. Contracts with a term of more than five years will include a provision that 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 will 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.

##### 10.2.5.2 Franchise Fee Special Account

All franchise fees and other monetary considerations will be deposited into a Department of the Treasury special account. In accordance with the NPS Concessions Management Improvement Act of 1998, twenty percent (20%) will be available to support activities throughout the national park system, and eighty percent (80%) will be available to the park unit in which it was generated, for visitor services and funding high- priority and urgently necessary resource management programs and operations.

##### 10.2.5.3 Record- keeping System

All concessioners will establish and maintain a system of accounts and a record- keeping system that utilize written journals and general ledger accounts to facilitate the preparation of annual concessioner financial reports.

##### 10.2.5.4 Annual Financial Reports

Concessioners will be required to submit an annual financial report that reflects only the operations that they are authorized to pursue.

##### 10.2.5.5 Donations to the NPS

The National Park Service will not solicit or accept donations or gifts from entities that have, or are seeking to obtain or establish a contract, lease, or other business arrangement with the Service. Nor will the NPS require any concessioner to donate or make contributions to the Service under any circumstance, including the incorporation of such a requirement in concession contracts. Further guidance on donations is available in Director's Order #21:

## Donations and Fundraising.

### 10.2.6 Concession Facilities

#### 10.2.6.1 Design

Concession facilities will be of a size and at a location that the Service determines to be necessary and appropriate for their intended purposes. All concession facilities must comply with applicable federal, state, and local construction codes, and meet accessibility requirements as set forth in applicable accessibility guidelines. Proposed concession facilities must conform to NPS standards for sustainable design, universal design, and architectural design. Concession development or improvement proposals must undergo review for compliance with NEPA and section 106 of NHPA (16 USC 470f), and be carried out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and other applicable legal requirements.

In addition to general park design requirements, the NPS will apply value analysis during the design process to analyze the functions of facilities, processes, systems, equipment, services, and supplies. Value analysis must be used to help achieve essential functions at the lowest life- cycle cost, consistent with required performance, reliability, environmental quality, and safety criteria and standards.

*(See Facility Planning and Design 9.1.1)*

#### 10.2.6.2 Accessibility of Commercial Services

Concessioners share the National Park Service's responsibility to provide employees and visitors with the greatest degree of access to programs, facilities, and services that is reasonable, within the terms of existing contracts and agreements. Applicable laws include, but are not limited to (1) regulations issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended (43 CFR Part 17), which prohibits discrimination on the basis of disability in programs or activities conducted by federal executive agencies; and (2) the Architectural Barriers Act of 1968, which requires physical access to buildings and facilities. Where there is no specific language identifying applicable accessibility laws in an existing concession contract, the NPS will address the issue of compliance in the annual concession operating plan.

*(See Physical Access for Persons with Disabilities 5.3.2; Accessibility for Persons with Disabilities 8.2.4 and 9.1.2. Also see Director's Order #42: Accessibility for Visitors with Disabilities)*

#### 10.2.6.3 Maintenance

Concession contracts will require concessioners to be responsible for all maintenance and repair of facilities, lands, and utility systems assigned for their use, in accordance with standards acceptable to the Service. Exceptions will be made only in extraordinary circumstances, as determined by the Director. All concession contracts must include a current maintenance plan as specified in the concession contract. Maintenance plans an exhibit to the concession contract and will be considered an integral part of a concessioner's contractual performance compliance.

Maintenance of historic properties and cultural landscapes will be carried out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

#### 10.2.6.4 Utilities and Services

Utilities include, but are not limited to, electricity, fuel, natural gas, water, disposal of wastewater and solid waste, and communication systems. The Service may provide utilities to the concessioner for use in connection with the operations required or authorized under the contract, when available, at rates to be determined in accordance with applicable laws. If the Service does not provide utilities to the concessioner, the concessioner will, with the written approval of the Director, and under any requirements prescribed by the Director, (1) secure necessary utilities at its own expense from sources outside the area; or (2) install the utilities within the area, subject to

conditions mentioned in the contract.

*(Also see Director's Order #35B: Sale of Park Utilities and Services to Support Activities Within Parks)*

#### 10.2.6.5 Closure of Commercial Operations During Government Shutdown

The Anti-Deficiency Act requires federal agencies to suspend all non-essential activities whenever there is a failure to enact an appropriations bill or adopt a continuing resolution. All concessioner-operated programs and services must cease, and visitors must be asked to leave within 48 hours.

All commercial facilities and services in a park will be closed in order to protect the safety of visitors and the integrity of park resources. Exceptions to this policy include concessions that are required for health and safety purposes or protection of the environment, or necessary to support park operations that are deemed essential, such as law enforcement.

Commercial facilities located on through-roads (roads or public highways that begin and end outside of a park, plus parkways) and public highways may remain open if doing so does not result in additional costs to the park (for example, the staffing of entrance stations). These commercial facilities may include operations such as service stations, food services, stores, and lodging, or portions of such operations that will not contribute to additional park expenses. The commercial facility in question should have access directly from the road or highway, and not require the re-opening of park roads having other destinations.

More specific aspects of closures may be guided by a Servicewide shutdown plan.

#### 10.2.7 Concessioner Employees and Employment Conditions

##### 10.2.7.1 Non-discrimination

Concessioners will comply with all applicable laws and regulations relating to nondiscrimination in employment and the provision of services to the public.

##### 10.2.7.2 Substance Abuse

In compliance with state and federal regulations condemning substance abuse, the NPS prohibits the unlawful possession, use, or distribution of illicit drugs and alcohol. The Service also prohibits the unlawful manufacture, cultivation, processing, or transportation of illicit drugs. This policy applies to concessioners and their employees, at any facility or in any activity taking place on National Park Service lands. Concessioners are required to provide and advise employees about the availability of Employee Assistance Programs addressing substance abuse problems.

#### 10.2.8 National Park Service Employees 10.2.8.1 Accepting Gifts and Reduced Rates from Concessioners

National Park Service employees may not receive concessioner goods or services at a discount unless it is in connection with official business, is to the government's advantage, and is provided for under the terms of a concession contract. However, employees may accept reduced rates or discounts offered by the concessioner when those same reduced rates or discounts are available to the general public.

National Park Service employees may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a concessioner or other person who conducts operations and activities that are regulated by the Department of the Interior. Employees should consult with their assistant ethics counselor regarding the limited exceptions to the general prohibition on accepting gifts from outside sources.

#### 10.2.8.2 Employment of NPS Personnel or Family Members by Concessioners

Federal law prohibits government employees from making recommendations, decisions, or approvals relating to

applications, contracts, controversies, or other matters in which the employee or the employee's spouse or minor child has a financial interest. Park employees may not make decisions, approvals, or recommendations related to concession activities when their spouse or dependent child is employed by a park concessioner in that particular park. For example, the spouse or dependent child of the superintendent, assistant superintendent, concession staff, environmental manager, or public health specialist may not be employed by a concessioner in the specific park in which the NPS employee works.

*(Also see Director's Order #37: Home Businesses in Parks)*

#### 10.2.8.3 NPS Employee Ownership or Investment in Concession Businesses

Department of the Interior policy prohibits employees and their spouses and minor children from acquiring or retaining for commercial purposes any permit, lease, or other rights granted by the Department for conducting commercial services on federal lands. Therefore, no National Park Service concession contract or commercial use authorization to conduct commercial services in a park will be issued to National Park Service employees or their spouses and minor children who are owners, partners, corporate officers, or general managers of any business seeking such a contract in federal land managed by the Department of the Interior. Further, to avoid the appearance of partiality and conflicts of interest, and to comply with ethics laws that apply to all federal employees, National Park Service employees may not work on any matter involving a business in which they, their spouse, or their minor children have a financial interest.

#### 10.2.8.4 Concession Management Personnel Qualifications

To effectively carry out the concession management program, managers and supervisors will make every effort to ensure that personnel selected for positions meet the essential competencies established for the position being filled. When concession management personnel lack the full complement of essential competencies or require refresher training for their position, managers and supervisors will ensure that those employees are trained and certified as competent. All personnel vacancy announcements issued for concession management must include program competencies.

### 10.3 Commercial Use Authorizations

Commercial Use Authorizations (CUAs) may be issued under the authority of 16 USC 5966. CUAs are not considered concessions contracts.

As of the date of publication of this edition of Management Policies, the NPS has not yet issued policies or regulations for the administration of CUAs. However, the applicable provisions of law are quite prescriptive and should be carefully considered. A more detailed discussion of CUAs will be included at a later date in implementing regulations and Director's Order 48B: Commercial Use Authorizations.