

management of the park area and does not grant a monopoly to provide all visitor services in a given area to the exclusion of other individuals or entities. An historical operator, however, may provide services similar to those provided prior to January 1, 1979, if acceptable to NPS as consistent with the purposes of the park area and provided that the similar services are not in excess of those provided by the concessioner as of January 1, 1979. In addition, the rights of an historical operator are considered terminated upon a change in the controlling interest in the historical operator. This provision is intended to implement the "grandfather clause" intention of section 1307(a) while not permitting the effective transfer of these "grandfather rights" to third parties.

Persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service within a park area in Alaska, who have continued to provide that visitor service without a break in the service, and who have retained controlling interest in the business are considered historical operators under these regulations. A break in service is defined as not having operated the approved visitor service for more than 11 consecutive months.

Section 13.83 Visitor Services Authorized After January 1, 1979 (Preferred Operators)

This section implements subsection (b) of section 1307 (except with respect to CIRI) and grants a "preference" (generally defined for the purpose of these regulations as a right to meet the terms of the best offer received by NPS in a public solicitation process for visitor services) to certain individuals and corporations to provide visitor services in certain Alaska park areas.

Section 13.83 of the proposed regulations applies to the two categories of persons to be given a preference pursuant to section 1307(b) of ANILCA, collectively referred to as "preferred operators." The first category of preferred operator is the Native corporation determined by the Director to be most directly affected by the park area.

The second category of preferred operator consists of persons who are determined by the Director to be local residents of any park area, whether or not it pre-existed ANILCA. A "local resident" as defined in these proposed regulations means a person living within 35 straight-line miles of a park area boundary. This would not apply under section 13.83 to persons living in communities with a population of more than 5,000 in order to effect the general

legislative intent of assisting persons located in sparsely populated areas of Alaska.

Section 13.83 as proposed establishes a procedure for the solicitation and award of visitor service authorizations which incorporates the rights of preferred operators under section 1307(b). In order to exercise the preference, a preferred operator must submit a responsive offer under the terms of a public solicitation. If a person without a preference submits a better offer, the preferred operator is given an opportunity to meet the terms of the better offer, and if the preferred operator does so, will be awarded the contract or permit if the preferred operator is capable of carrying out the terms of the better offer, as determined by the Director.

As with historical operators, the NPS does not consider that section 1307(b) intended to provide preferred operators with an exclusive right to provide visitor services. Section 13.83 permits other persons to provide visitor services in park areas in a manner consistent with the preference of preferred operators. Accordingly, public solicitations for section 13.83 purposes will generally be the public solicitation used for general concession authorizations under 36 CFR Part 51.

Congress recognized the possibility that more than one Native corporation preferred operator and/or more than one local resident preferred operator may submit proposals, and meant for them to hold equal status. Section 13.83 also establishes procedures for resolving disputes where more than one person qualifies as a preferred operator with respect to a particular visitor service authorization.

Section 13.84 Preference to Cook Inlet Region, Incorporated

This section describes the right of first refusal granted by section 1307(b) to Cook Inlet Region, Incorporated to provide new visitor services within that portion of Lake Clark National Park and Preserve that is within the boundaries of the Cook Inlet Region.

Section 13.85 Most Directly Affected Native Corporation Determination

This section establishes procedures and criteria for determining which Native corporation is most directly affected by a park area and accordingly is a preferred operator with respect to that park area. The Director's "most directly affected" Native corporation decision or appeal decision is final for all future applicable visitor services.

Section 13.86 Appeal Procedures

This section establishes procedures and criteria under which a person who considers that they have not been provided section 1307 rights may appeal to the Director for a final administrative determination in this regard.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule as described above. Public hearings on these proposed regulations may be held following their publication in the **Federal Register**. If such hearings are held, specific locations, dates and times will be announced later in the **Federal Register** and in local publications.

Drafting Information

The primary author of these proposed regulations is William P. Quinn, Concessions Analyst, Alaska Region, NPS.

Paperwork Reduction Act

The collections of information contained in §§ 13.82—13.84 of this proposed rule are for the purposes of preparing an offer in response to a contract solicitation pursuant to 36 CFR Part 51, and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0095.

The collections of information contained in section 13.85 of this proposed rule will be submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information in the final rule will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for the collection of information under section 13.85 is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, D.C. 20013; and the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20002.