

Contract Term Extensions

Issue	NPHA proposal	Interior Proposed Rule	Garden	Van Ness Feldman
<p>Contract term extensions for merit, adversity and transfer restrictions</p>	<p>(b) Notwithstanding the public solicitation requirements of this part, the Director shall include terms and conditions in all current and future concession contracts that authorize the Director to adjust the contract term up to the maximum term allowed by statute in the event the Director determines the concessioner has received favorable annual ratings during the term of its contract and the Director determines that the concessioner’s demonstrated performance warrants a longer term.</p>	<p>§ 51.73 What is the term of a concession contract? (a) A concession contract will generally be awarded for a term of 10 years or less and may not have a term of more than 20 years (unless extended in accordance with this part). The Director will issue a contract with a term longer than 10 years when the Director determines that the contract terms and conditions, including but not limited to the required construction of capital improvements or other potential investments related to providing both required and authorized services, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should take into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. (b) The Director may include in a concession contract an optional term or terms, in increments of at least one year, where the total term of the contract, including all optional terms, does not exceed 20 years. Such a contract shall provide that an optional term may be exercised by the concessioner if the Director determines that: (1) The concessioner has received favorable annual ratings for every</p>	<p>Length of contract term (§ 51.73): NPS accepted in many respects NPHA’s proposal that the regulations encourage contract terms longer than 10 years where appropriate. NPS added strong language in the regulation directing longer terms where warranted, and deleted the language that encouraged terms to be “as short as is prudent.” NPS’ comments in the Federal Register notice explaining this change also provide strong support for longer terms where appropriate. In addition, NPS adopted NPHA’s proposal to authorize contract extensions to reward high evaluation ratings or address interruptions or changes to operations, and allowed such extensions to continue for the full 20 year terms allowed by the statute.</p>	<p>Term of Concession Contracts. The proposed rule would clarify that NPS may issue contracts for shorter or longer than 10 years (up to the 20-year statutory maximum) depending on the contract and remove the current stated preference that contract terms be “as short as is prudent.” Significantly, NPS also proposes to allow for contracts to include option years of one year or more, provided that the total term of the contract including option years does not exceed 20 years. Option years would be intended to incentivize and reward concessioners with “favorable” annual ratings and who meet other specified performance criteria, but they could also be exercised when there has been a substantial interruption or change in operations due to reasons beyond the control of the concessioner, such as natural events or government-ordered interruptions. This change would apply to current concession contracts if the contract is amended, as well as to future contracts. If this part of the rule is finalized as proposed, whether NPS would</p>

		year during the term of the contract to date, as defined in the contract, and has met the performance criteria defined in the contract for the exercise of an optional term; or,		consider amending existing contracts to include one or more option years to address the interruption or change to many operations as a result of the ongoing COVID-19 pandemic is unclear.
Contract term extensions for merit, adversity and transfer restrictions	(c) Notwithstanding the public solicitation requirements of this part, the Director shall include terms and conditions in all current and future concession contracts that authorize the Director to adjust the contract term up to the maximum term allowed by statute in the event there has been a substantial interruption of or change to operations due to natural events or other reasons outside the control of the concessioner, including but not limited to government ordered interruptions or changes.	(2) There has been a substantial interruption of or change to operations due to natural events or other reasons outside the control of the concessioner, including but not limited to government-ordered interruptions, and the exercise of an optional term is warranted in light of the interruption or change to operations.	See above	.See above
Contract term extensions for merit, adversity and transfer restrictions	Nor requested	<p>§ 51.87 Does the concessioner have an unconditional right to receive the Director’s approval of an assignment or encumbrance?</p> <p>* * * * *</p> <p>(i) That a concession contract may not be assigned within twenty-four months following the effective date of the contract, unless the proposed assignment is compelled by circumstances beyond the control of the assigning concessioner.</p>	<p>Moratorium on contract assignments (§ 51.87): NPS unilaterally proposed to prohibit any contract assignments until after 2 years of issuance of a new contract (unless the need for an assignment was beyond the control of the concessioner). This prohibition would apply not only to explicit changes in the name of the existing concessioner, but any changes in controlling interest of that concessioner. NPS explained the change would prevent concessioners with a preferential right bidding on a</p>	Many assignments or encumbrances of concession contracts require prior NPS approval. Current regulations do not restrict the ability of a concessioner to seek approval of an assignment following the start of a new contract. The proposed rule would prohibit assignments within 24 months after the effective date of a contract, unless the requested assignment is compelled by circumstances beyond the control of the assigning concessioner. According to the proposed rule, this change would apply to current concession

			contract with the intent to merely sell it after they won.	contracts that are amended after the effective date of this rule, as well as to future contracts.
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