

Rate Determination

Issue	NPHA proposal	Interior Proposed Rule	Garden	Van Ness Feldman
<p>Setting Appropriate Rates Based On Market Forces</p>	<p>36 C.F.R. § 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director? (a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director. (b) A concessioner's rates and charges to the public must be based on market forces to the maximum extent practicable. Accordingly, the Director shall include in all concession contracts, including any existing contracts, a provision which states that the Director shall approve rates and charges proposed by a concessioner as reasonable and appropriate when those rates and charges are based on existing market forces. Rates and charges shall be found to be based on existing market forces if there is a demonstrated public demand for the services and items at those rates and charges. If a concessioner's rates and charges are not based on market forces, as demonstrated by a lack of demand for its services or items, the rates and charges should not be approved (or any prior approval should be withdrawn) and the rates and charges must be reduced to create sufficient demand. Similarly, if the rates and charges are below amounts supported by market forces, which prevents a fair return to the government, those rates and charges should not be approved (or any prior approval should be withdrawn) and the</p>	<p>§ 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director? * * * * *</p> <p>(b) The Director shall approve rates and charges that are reasonable and appropriate in a manner that is as prompt and as least burdensome to the concessioner as possible and that relies on market forces to establish the reasonableness of such rates and charges to the maximum extent practicable. Unless otherwise provided in the concession contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and changes for facilities, goods and services of comparable character under similar conditions with due consideration to the following factors and other factors deemed relevant by the Director: Length of season; peak loads; average percentage of occupancy; accessibility; availability and cost of labor; and types of patronage.</p> <p>(c) The Director shall identify the rate approval method to be used for each category of facilities, goods, and services to be provided when preparing the prospectus for a concession contract. The Director will use the least burdensome and most market-based</p>	<p>Rates (§ 51.82): NPS agreed with NPHA's proposal to explicitly refer to the agency's obligation to rely on "market forces" when approving rates. The prior regulation omitted any reference to "market forces" being relevant. NPS did not, however, include NPHA's proposal to explain that the term "market forces" is based on the public's willingness to pay a particular rate. However, NPS did explicitly set out in its proposed regulation its "competitive market declaration" (CMD) process, which previously had only been set out in its internal policy manual. Notably, the CMD process is largely based on rates being what the market will bear. NPS also agreed with NPHA's proposal that the agency respond to rate requests within 30 days. NPS, however, gave itself some leeway by only requiring that it "respond" to the request in that timeframe, not necessarily approve or disapprove it. NPS also proposed that the 30 days not begin until a request was "complete," which allows the agency to claim it needs more documentation. NPHA may want to consider comments that address these potential loopholes in the language of the proposed</p>	<p>Concessioner Rates. The current rate approval process can impose a significant administrative burden on both NPS and concessioners, sometimes resulting in delays in rate approvals. To lessen this burden, NPS is proposing several changes to the rate approval process that would apply to both current and future concession contracts. The proposed rule would update the regulations to reflect language in the 1998 Act to clearly state that NPS will approve reasonable and appropriate rates in a manner as prompt and unburdensome as possible, relying on market forces to establish the reasonableness of rates and charges to the maximum extent possible. It would require NPS to identify the rate approval method for each category of facilities, goods, and services in the prospectus. It would require rates to be based on a competitive market declaration when NPS determines that market forces are sufficient to establish the reasonableness of rates and charges, and only allow use of other rate approval methods if NPS determines that market forces are inadequate to establish the reasonableness of rates and charges. NPS could change the rate approval method during the term of the contract to</p>

	<p>rates and charges must be increased accordingly. Unless otherwise provided in a concession contract, the reasonableness of a concessioner's rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: length of season; peakloads; average percentage of occupancy; accessibility; availability; and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.</p>	<p>method that is appropriate. Whenever the Director determines that market forces are sufficient to ensure reasonable and appropriate rates, the Director will make a competitive market declaration, and rates and charges will be approved based upon what the concessioner determines the market will bear. Other rate approval methods will be used only when the Director determines that market forces are inadequate to establish the reasonableness of rates and charges for the facilities, goods, or services. The Director will monitor rates and charges and competition and may change the rate approval method during the term of the contract to reflect changes in market conditions.</p>	<p>regulation. NPS did, however, agree with NPHA's proposal that the agency provide a written basis for any disapproval of proposed rates.</p>	<p>reflect changes in market conditions, which would allow NPS to respond to market pressures on concessioner services rates. Finally, new language would require that NPS issue a response to an existing concessioner's request for a rate change within 30 days and explain in writing any denial of such a request. Concessioners should be aware that, to the extent NPS determines use of competitive market methods will result in increased rates and revenue, NPS could impose higher minimum franchise fees or other contract requirements to account for the additional financial opportunity.</p>
<p>Response to Request on Rates</p>	<p>(c) The Director shall issue a decision in response to a request by a concessioner to change rates and charges to the public within 30 days of receipt of the request. If a decision is not issued within 30 days, the request shall be deemed approved. Before denying any such request, the Director shall obtain the recommendation from the Interior Business Center at the Department of the Interior. If the Director does not approve of the rates and charges proposed by the concessioner, the Director must provide in writing the basis for any disapproval at the time of the decision by the Director, including a copy of the recommendation from the Interior Business Center.</p>	<p>(d) The Director shall issue a response to a request by a concessioner to change rates and charges to the public within 30 days of receipt of a complete and timely request in accordance with the conditions described in the contract when possible. If the Director does not approve of the rates and charges proposed by the concessioner, the Director must provide in writing the basis for any disapproval at the time of the response by the Director.</p>	<p>See above</p>	<p>See above</p>