

# NPS Concession Management Rate Administration Guide Addendum

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# 1. Background

The Department of the Interior issued revisions to 36 CFR § 51, Commercial Visitor Services, Concession Contracts (Revised Rule) on December 29, 2023. The Revised Rule took effect on January 29, 2024. There were eleven principal changes to the rule (Rule Changes). Changes to 36 CFR § 51.82 specifically concern approval of National Park Service (NPS) concessioner rates and charges.

This policy primarily concerns changes regarding the applicability of competitive market declaration (CMD) in contracts and NPS procedures for rate administration.

This policy augments those defined in the NPS Commercial Services (CS) Guide and 2017 Rate Administration Guide. Where differences occur between this memorandum and those two guides, this policy memorandum supersedes. If specific revisions do not apply, existing policies in the CS Guide and Rate Administration Guide continue to be in effect.

This policy and its procedures may be changed or expanded as the Service seeks to implement the rule in the most prompt and unburdensome manner. This policy and its procedures will eventually be integrated into the CS Guide and Rate Administration Guide.

This policy does not address the other ten Rule Changes. Separate policies and procedures will be issued concerning those changes as appropriate.

## A. Definitions

- i. **Rate Approval Method:** 'Rate approval method' describes the methodology the Director and their designees use to evaluate whether concessioner rates and charges are reasonable for visitor services provided under a concession contract. Rate approval methods include competitive market declaration, comparability, manufacturer's suggested retail price (MSRP), markup, core methods, financial analysis, and indexing. The rate approval method can also be referred to as the Rate Method.
- ii. **Request to Change Rate Approval Method:** The Director may review the rate approval method used in an existing contract from time-to-time, including periodically at the concessioner's request. A request to change rate approval method occurs when a concessioner proposes changing the rate approval method specified in the operating plan of the contract to a different method. Concessioners must provide certain information and analyses within such requests. 36 CFR § 51.82(c) describes the procedures for identification of a rate approval method.
- iii. **Rate Request:** A rate request is a concessioner proposal to change the rates and charges for visitor services under the concession contract. A rate request is applicable to the core, comparability, and financial analysis rate approval methods, but is not applicable to the markup, MSRP, and competitive market declaration methods. If CMD is established as the rate approval method to be used in the administration of rates, the concessioner does not need to submit a rate request to change the rates it charges to the public.
- iv. **Rate Monitoring:** Rate monitoring occurs under all methodologies but requires different procedures for different rate administration methods. In the case of CMD, rate monitoring includes monitoring rates charged by the concessioner and the competitive market, as well as visitor satisfaction and visitor perceptions of value. In the case of comparability, MSRP, markup, core, and financial analysis methods, rate

monitoring includes periodic evaluations of concessioner compliance with maximum approved rates. 36 CFR §51.82(c) directs the NPS to conduct rate monitoring.

## **2. Policy and Procedures**

### **A. Applicability**

Changes in the Revised Rule in § 51.82 and this policy apply to both future and existing contracts.

### **B. Roles and Responsibilities**

#### *i. Associate Director, Business Services*

Consistent with current policy, the responsibility to develop and implement policy and procedures for rate administration necessitated by the revisions to 36 CFR § 51 is delegated to the Associate Director for Business Administration (ADBS) and their designees. The ADBS also has certain new rate administration review and approval responsibilities related to determining rate approval methods, as further described in this policy.

#### *ii. Regional Directors*

Regional directors (RDs) and their designees are responsible for providing advice and technical support to park superintendents regarding rate administration. The RD also has certain rate administration review and approval responsibilities as further described in this guidance.

#### *iii. Superintendents*

The primary responsibility for rate administration resides with park area superintendents and their designees consistent with existing policy. This generally includes selection of rate approval methods; rate monitoring; and responding to, reviewing, approving, or denying rate requests in accordance with 36 CFR 51.

## **3. Determining Rate Approval Methods**

36 CFR § 51.82(c) requires the NPS to use the competitive market declaration (CMD) rate approval method unless the Director determines that market forces are inadequate to establish the reasonableness of rates and charges for the facilities, goods, or services. As this rate approval method may not be appropriate for all services and in all circumstances, superintendents must review each circumstance (each contract, specific services within contracts, and distinct locations of the same service within a contract) to validate a competitive market exists for the services such that market forces will result in reasonable and appropriate rates, using the methods described below.

### **A. Determining Adequacy of Market Forces**

The first step in determining the appropriate rate approval method is to conduct a review of market forces. In most instances, when a market has greater competition, market forces exert a stronger influence on pricing behavior, which yields more reasonable and appropriate rates. The existence of a competitive market is dependent upon several site-specific circumstances. Key criteria to evaluate whether adequate market forces are present, and therefore, a competitive market exists may include:

- **Number of Sellers in the Market:** How many operators provide a service that is a reasonable substitute for the concessioner's service? The existence of even one competitor can indicate a competitive market exists. Note however, that operators in

the area owned by the concessioner or its parent or subsidiary companies do not constitute competitors.

- **Similarity of Products or Services:** How similar are the products and services offered in the market to the products and services offered by the concessioner? While a greater similarity generally indicates competition, in some instances, dissimilar offerings might compete for the same visitor segments.
- **Distance to Competitors:** How close, in terms of travel time, are the competitors to the service offered by the concessioner? Acceptable distances to sustain a competitive market vary by park and service type. Are the alternative services accessible to visitors, or would leaving the park to purchase services from competitors significantly disrupt the visitor's park experience? A competitive market may exist if leaving the park to find a similar or substitute service does not significantly disrupt the visitor's park experience.
- **Information Availability:** Are visitors able to view and 'shop' product and rate information for similar products and services in a competitive market in advance so that customers are informed of potential rate differences and can access additional competitors? The availability of product and rate information—either in-person, online, or through other sources—may indicate stronger market forces.
- **Critical Nature of the Services or Products:** Are the services or products sufficiently important to visitors such that they have little choice than to obtain them from the concessioner? If visitors must use the concessioner's service, market forces do not exist.

The summary provided in the Federal Register notice for the Revised Rule describes examples where CMD may be inappropriate, including "whether the lodging or food and beverage outlets or convenience item stores are sufficiently far from out-of-park alternatives, guiding services for one-of-a-kind recreational experiences, and transportation to NPS units where there is only one way to access the site (e.g., ferry service to the Statue of Liberty)." The presence of several similar lodging properties an hour away from a concessioner lodge may create reasonable market forces. Traveling such distances to reach the lodging before or after visiting the park is unlikely to create a hardship for park visitors and rates are likely available for comparison in advance. However, having to leave the park during a visit and travel 30 minutes each way to the closest similar food and beverage outlets could be considered sufficiently disruptive to a visitor's park experience to reduce the competitive nature of the commercial service. Furthermore, rates for food and beverage might not be available for comparison in advance of a visitor's trip. Easy access to necessities such as toilet paper, over the counter medication and first aid supplies, local firewood, and ice is critical to park visitors—the existence of a captive market, combined with the disruption to the visitor's park experience in having to travel out of the park to otherwise obtain such necessities, could limit their competitive nature.

#### **B. Making a Competitive Market Declaration**

If the superintendent determines that market forces are adequate to establish the reasonableness of rates and charges for a particular visitor service, CMD shall be used as the rate approval method for that service. The contract operating plan exhibit should identify the rate approval method as CMD. The process and timing for making this determination during prospectus development for new contracts and during the term of an existing contract are described in this Addendum in Section 3.D and 3.E respectively below. The park should follow the Rate Administration Guide and this Addendum's procedures for managing CMD, including formal documentation and annual review of the rate method. Once CMD is established, the concessioner will be allowed to set rates for the service or activity based on market demand.

**C. Other Rate Approval Methods**

If the superintendent determines that market forces are inadequate to establish the reasonableness of rates and charges for the facilities, goods, or services, the superintendent is required to identify the least burdensome and most market-based alternative method.

The table below identifies the primary rate approval method by service type and alternative rate approval methods when CMD is not considered appropriate. In most instances, the ‘core’ rate approval method is the preferred alternative to CMD. The rate approval method can be changed to a more conservative approach if the superintendent determines, based on monitoring, that reasonable and appropriate rates are not being achieved with the less burdensome rate approval method.

Service Type	Primary Method	Primary Alternative	Secondary Alternatives
Lodging	Competitive Market Declaration	Core (Room)	Comparability Financial Analysis
Food & Beverage	Competitive Market Declaration	Core (Menu)	Comparability Cost of Goods
Retail- Convenience Items	Competitive Market Declaration Core (Necessities)	MSRP	Markup Core
Retail - Merchandise	Competitive Market Declaration	MSRP	Comparability
Fuel	Competitive Market Declaration	Fuel Markup	Comparability
Visitor Transportation Services <i>(where concessioner service is only option to access park)</i>	Comparability	Financial Analysis	CMD
Guided Activities and Tours	Competitive Market Declaration	Core (Services)	Comparability
Other Services	Competitive Market Declaration	Core (Services)	Comparability Financial Analysis

**D. Establishing Rate Approval Methods in Prospectus Development**

Applicable rate approval methods must be analyzed and established during prospectus development and the selected rate approval method must be documented for each required and authorized service in the draft contract operating plan. The rate approval method identified in the prospectus will be used, at a minimum, in the first year of the contract term.

As noted above, pursuant to the Revised Rule, CMD serves as the primary rate approval method. Where the superintendent determines that market forces are inadequate to establish the reasonableness of rates and charges for a particular visitor service, the decision to use a rate approval method other than CMD must have concurrence from the regional director. The regional director must, through the WASO Commercial Services Program, then consult with the ADBS to validate the decision to use methods other than CMD to ensure incorporation of best practices under the revised regulation. The regional director should

complete this consultation in the early stages of prospectus development.

Documentation describing the determination of adequacy of market forces and selected rate approval method must be drafted by the park and included in the administrative record of the prospectus.

#### **E. *Establishing Rate Approval Methods in Existing Contracts***

A change to rate approval methods can be initiated by the park or in response to a concessioner request.

In accordance with the revisions to 36 CFR § 51.82, and the 2017 Rate Administration Guide, the park superintendent or their delegated representative will monitor rates, charges, and competition, and may change the rate approval method during the term of the contract to reflect changes in market conditions. This change may include a decision to approve rates using CMD. In such circumstances, the park must consult with the concessioner to implement changes to rate approval method, to establish applicable monitoring and reporting requirements and identify potential financial offsets the concessioner will provide (described below in Section 6). CMD should not be implemented unless the concessioner agrees to comply with monitoring and other requirements as described in this policy. Once CMD is established as the rate approval method for a service or location, an informal review of market forces should be conducted annually by the superintendent.

Where the superintendent determines that market forces are inadequate to establish the reasonableness of rates and charges for a particular visitor service, the superintendent must identify the alternative method for rate approval which is the least burdensome as possible that will provide reasonable and appropriate rates. Documentation describing the determination of adequacy or inadequacy of market forces and selected rate approval method must be drafted by the park and included in the concession contract's administrative record.

In accordance with the 2017 Rate Administration Guide, the concessioner may propose changes in rate approval methods. The NPS has adopted the rate request response timeframe specified in 36 CFR 51.82(d) as applicable to responses to concessioner requests not only to change their rates, but also to change rate approval method. This timeframe provides 20 days for the NPS to respond with a determination whether the request to change rate approval method is complete or not, and once determined complete, 10 days to approve or deny the request to change rate approval method. (Certain exceptions apply for 2024; see Section 3.E.iv below)

##### **i. *Concessioner Requests for Changes to Rate Approval Method***

Concessioner proposals to change the rate approval method utilized under the contract to CMD must be submitted in writing and include analysis and justification demonstrating that a competitive market exists, how the rate approval method will be less burdensome, and that the rate method will provide reasonable and appropriate rates and charges to visitors. Concessioners may request changes to rate approval methods beginning in the second year of the contract term.

The concessioner's request should include:

- An analysis that addresses all 5 criteria described in 3.A. above, including a list of operators of the respective service which the concessioner views as direct competitors.
- A description of the concessioner's planned rate setting strategy including its understanding of market position and variance with competitor rates.
- The concessioner's proposed monitoring plan over the year which should include occupancy or utilization information, visitor satisfaction data, and other supporting information that demonstrates to the park that rates remain reasonable, occupancy levels are sufficiently maintained, and visitors are satisfied with the value received for concessioner services.
- The concessioner's proposed financial offsets, as described in Section 6 below.

Some small concession operations, or services like guided tours with only a handful of competitors, may not have access to the data sources listed above. In such instances, the concessioner should work with the park to identify alternative information sources that could be used to compare concessioner rates with those of competitors.

Should a superintendent select a rate approval method other than CMD in response to a concessioner request to change the rate approval method to CMD, the park should notify the region to facilitate regional director review and concurrence. The regional director, or their designee, must maintain a list of all concession contracts by service and location that are not approved for CMD. Reviews of rate approval methods and approvals to deviate from CMD must be documented in the park administrative record.

**ii. *Implementation of Requested Method when Review Timelines are Exceeded***

The NPS is adopting the rate request review timelines articulated in 36 CFR § 51.82(d) (described below in 4.A.) as applicable to requests to change rate approval method made pursuant to 36 CFR § 51.82(c). A concessioner may implement its requested change in rate approval method and associated charges if the NPS exceeds the timeline described below in 4.A. and has not notified the concessioner in writing as to whether their request was complete or why extraordinary circumstances will delay the NPS response. If the requested method is denied, the NPS will not require the concessioner to retroactively adjust any rates or charges for services booked prior to notification of denial.

**iii. *Request to Change Rate Approval Method Appeals***

Concessioners may appeal a decision by a park to deny a request to change a rate approval method for a service to CMD. The regional director must consult with the ADBS to review and approve or deny such requests. Park superintendents should prepare a justification for not using CMD which should be submitted by the park to the region for review and concurrence by the RD and then forwarded by the region to the ADBS for their determination of compliance with the Revised Rule. A concessioner may not implement its proposed rate method while an appeal is ongoing, regardless of the timeline of response.

**iv. *Special Considerations for 2024***

The NPS will accept and evaluate concessioner requests to change rate approval methods to CMD throughout the 2024 season. In accordance with the NPS WASO Field Memo, "Determinations Regarding Prospectus Franchise Fee and Rate Methods due to Changes to 36 C.F.R. Part 51, Concession Contracts," dated February 27, 2024, the NPS will have 60 days to respond to concessioner proposals submitted pursuant to

the 2024 opportunity to request a change to rate approval method. Should CMD be approved as a new rate approval method, the concessioner and the park should work together to determine the appropriate timing for the concessioner to initiate market-based rates.

Should the NPS determine that market forces are inadequate to establish the reasonableness of rates, the requested change in rate approval methodology would not be adopted and the rate approval method identified in the operating plan of the contract will continue to be applicable. Changes to rates that result from the implementation of CMD as a rate approval method apply to reservations that have not already been made.

#### **4. Responding to Rate Requests**

Responding to and managing rate requests (e.g., a change in the actual charges for a service), which is described in this section, is different than the above-described process for responding to and managing requests to change rate method (e.g., changing from comparability to CMD).

##### **A. Timeline to Respond to Rate Requests**

36 CFR § 51.82(d) requires the park to respond to the concessioner within 20 days of receipt of a rate request to notify the concessioner if the request is complete or where the Director determines the request incomplete, a description of the information required for the request to be determined complete. Parks must provide an approval or denial of the rate request within 10 days of receiving a complete rate request package.

Rate requests are applicable to the core, comparability, and financial analysis approval methods, but are not applicable to CMD. If the rate approval method under the contract is comparability, and the rate request necessitates a full review comparability study, the park must respond to the rate request within 30 days of receipt of a complete request. These timelines can only be exceeded in extraordinary circumstances determined by the park superintendent in accordance with 36 CFR § 51.82(d).

##### **B. Implementation of Requested Rates when Review Timelines are Exceeded**

A concessioner may implement its requested changes to rates and charges if the NPS exceeds the timeline described above in 4.A. and has not notified the concessioner in writing as to whether their request was complete or why extraordinary circumstances will delay the NPS response. The proposed rates may continue to be used by the concessioner until the park provides a written decision regarding approval of rates. If the requested rates are denied, the NPS will not require the concessioner to retroactively adjust any rates or charges for services booked prior to notification of denial.

##### **C. Rate Request Information Requirements Described in Operating Plans**

§ 51.82(c) of the Revised Rule requires that each contract describe the information necessary to include for a rate request to be considered complete. Such information must be incorporated into all concession contract operating plans no later than August 30, 2024. The operating plan should instruct concessioners on the topic areas rate request submittals should address, which may include: the concessioner's listing of comparable properties or services, ratings of comparability criteria for such properties or services, inventories of extra quality features, and an analysis of past, current, or forecasted rates. The operating plan may also describe quantitative topics, including maximum and minimum rates, average rates, or other criteria, separated by specific service offering and season. Concessioner rate requests should conform to the guidance in the 2017 Rate Administration Guide.



#### **D. Rate Request Appeals**

Consistent with current rate administration policy, the RD is responsible for reviewing and approving or denying a rate request in response to a concessioner appeal of a rate request decision. There is no further appeal beyond the RD. A concessioner may not implement its proposed rates while an appeal is ongoing, regardless of the timeline of response.

Concessioner appeals of superintendent selections of rate approval methods are described above in section 3.E.

#### **E. Special Considerations for 2024**

The opportunity to submit a request to change rate approval method to CMD does not convey an opportunity to submit an out-of-cycle rate request. If a request to change rate approval method is not approved, existing established rates remain in effect. Concessioners that have already submitted rate requests in accordance with their contract-specified rate request schedules and have begun to book reservations for 2024 and 2025 must honor all rates for reservations that have already been made and must meet all applicable advance rate policies for 2024 as outlined in the Rate Administration Guide, regardless of whether a subsequent concessioner request to change rate approval method to CMD is approved.

For rates in 2024 and beyond that have not yet been proposed or submitted, parks must implement the rate request response timeframes described in 36 CFR § 51.82(d).

### **5. Establishing Concessioner Request Schedules**

In accordance with 36 CFR § 51.82(c) and current policy, a rate request schedule must be included in each contract. By no later than August 30, 2024, a schedule describing when the concessioner should submit requests to change rate approval methods and a schedule describing when the concessioner should submit rate requests should be included in all operating plans, or if already present, should be reviewed and modified as needed to comply with 36 CFR § 51.82.

The 2017 Rate Administration Guide describes the importance of analyzing changes in rate approval methods in advance of the concessioner's rate request being due, so that concessioners have ample time to implement changes to rate approval methods into their rate requests. Parks should implement a schedule for concessioner requests to change rate approval methods that occurs at least 60 days ahead of any established or anticipated rate request submittal deadlines.

Consistent with current guidance in the 2017 Rate Administration Guide, the rate request schedule should provide a logical, realistic time frame for completing the necessary research, analysis, document preparation, and reviews—balanced with the need for concessioners to prepare advertising materials and public rate schedules. Parks with multiple concession operations should consider staggering rate request schedules to help the park meet appropriate response times. For example, if a park has multiple concession contracts with multiple services, parks can work with concessioners to prescribe a specific 2–3-week window during which the concessioner must submit its rate requests to ensure rates for separate services and contracts are submitted incrementally and not all at once.

### **6. Concessioner Financial Offsets for CMD**

This section only applies to requests to change rate methodology to CMD in existing contracts for services that had a different rate methodology identified in the contract operating plan. The flexibility offered by CMD is predicted to increase the total revenue generated with no change in expenses to the concessioner. The Federal Register Notice summary of the Revised Rule

states, “changes in the financial opportunity of the contract will be accounted for through contract requirements that would benefit the public using the concession services. An analysis of the expected relationship between rates and such contract changes can be found by reading the report entitled “36 CFR [part] 51 Concessions Contract Revisions Regulatory Impact Analysis (RIA) and Initial Regulatory Flexibility Analysis (IRFA)” that can be accessed at <https://www.regulations.gov> in Docket ID: NPS-2020-0003.”

To address the above-described changes to financial opportunity, concessioners who hold existing contracts are required to submit proposed financial offsets as part of their request to change rate approval method to CMD were already accounted for during prospectus development. These offsets must be above and beyond commitments already required in the contract. Examples of potential offsets include:

- Capital improvement projects related to visitor services or employee accommodations that are not LSI-eligible or for which LSI is waived.
- Additional environmental management, sustainability, and resource protection initiatives like expanded recycling or environmentally preferable product programs.
- Expanded service hours or operating dates for certain visitor services as requested by the Service (e.g., early morning or late evening service hours for food and beverage outlets that are important for visitors but may not generate substantial profits).
- Upgrading personal property at visitor services or employee accommodations.
- Providing enhanced amenities for visitors or seasonal or other non-management employees.
- Improving amenities within visitor services and facilities associated with those services.

When concessioner proposals for offsets include financially significant measures, proposals that provide a financial analysis of projected revenues and a detailed buildup of the cost of the investment or additional expenses will assist the NPS in reviewing the concessioner’s proposal to change rate method to CMD.

Park superintendents must update contract operating plans to reflect the offsets that are agreed upon between the concessioner and the park.

Establishing these offsets is intended to acknowledge the economic benefit CMD might offer but is not intended to be a dollar-for-dollar or overly burdensome exercise. Furthermore, understanding the true revenue benefits associated with moving to CMD from another rate approval method are likely to be hard to predict, particularly in the first year of use. Given this uncertainty, park superintendents are encouraged to be reasonable and practical in their review and selection of proposed offsets. The park may request or receive new proposals to modify the offsets from the concessioner annually to improve them or better align them based on annual monitoring data.

## **7. Rate Monitoring and Reassessment**

The NPS must monitor rates and charges to ensure they are reasonable and appropriate pursuant to the revised rule at 36 CFR § 51.82(c). This requirement applies to rates established through CMD.

In accordance with current policy in the CS Guide and Rate Administration Guide, for contracts using rate approval methods other than CMD, this process involves reviewing the advertised and charged rates against the annually approved amounts.

Under CMD, rates and charges can change dynamically from day to day making monitoring more complex. Parks should monitor rates against market comparables using data provided by the concessioner as agreed upon through the rate request approval process. For example, parks may ask concessioners to supply rate data from their bookkeeping or revenue management system, and competitor rate data obtained through web APIs, services like Smith Travel Research, Lighthouse, or TripAdvisor, or other information to demonstrate they remain within reasonable thresholds of competitors. The park may also use other monitoring techniques developed by the park or made available through the WASO Commercial Services Program.

The NPS desires to prioritize occupancy and utilization over revenue generation in its concessions. Therefore, the park should obtain occupancy or utilization information for properties/services under CMD and review it to ensure that rates do not appear to be adversely impacting visitor usage. Finally, the park should receive and utilize visitor satisfaction data provided by the concessioner to assess whether visitors believe they are receiving the appropriate value for the rates being charged. Concessioner visitor satisfaction data should address overall visitor satisfaction, visitor perceptions of value, and whether visitor expectations are met among other topic areas the concessioner and park identify.

The WASO Commercial Services Program intends to release further guidance and tools regarding rate monitoring and reasonable thresholds of concessioner and competitor rates.