

authorization terms and conditions; refusal of an offer to reissue a special use authorization; and failure to provide authorized services for 24 consecutive months. In addition, the rights of a historical operator would terminate upon a change in the controlling interest in the business providing the visitor services, unless the controlling interest passed to those who otherwise qualify as historical operators.

The following is an analysis of and response to a comment on § 251.122 of the proposed rule.

Comment: One respondent suggested that a provision be added to § 251.122 to require that before making a decision to grant historical operator status, the authorized officer notify any Native Corporations that have applied for designation as the most directly affected Native Corporation for the CSU and give them the opportunity to comment before making the determination. The respondent stated that notice and opportunity to comment are equitable and consistent with due process because a determination granting historical operator status for a particular CSU may defeat the most directly affected Native Corporation's preference right within the same CSU. According to the respondent, information that can be provided by the most directly affected Native Corporation should, therefore, be obtained before any final determination is made regarding historical operator rights within an affected CSU.

Response: The Department disagrees with this respondent and has not revised the rule to require notice and comment prior to granting historical operator status because the Department disagrees that a determination granting historical operator status for a particular CSU may defeat a most directly affected Native Corporation's preference right within the same CSU. Historical operator rights conferred by section 1307(a) of ANILCA are separate from the preferences granted to local residents and most directly affected Native Corporations under section 1307(b) of ANILCA. In addition, historical operator determinations are based on objective, specific statutory criteria applied to information contained in established special use authorization files. Consequently, the Department believes that public notice and comment would be an unnecessary administrative burden and would not greatly aid in making historical operator determinations. Finally, the Department wants its rule to be as consistent as possible with the final rules published by the National Park Service and the U.S. Fish and Wildlife Service, neither of which provides for public notice and

comment in connection with historical operator determinations.

In the final rule, the Department has added a paragraph to § 251.122 to address a concept in the statute that was omitted in the proposed rule. The new paragraph (c) clarifies that a historical operator may apply for an authorization to provide visitor services similar to but in lieu of those provided by that historical operator before January 1, 1979, and specifies the criteria under which that type of application will be granted. The new language is almost identical to the language governing this subject in the National Park Service rule. Under this new provision, the authorized officer shall approve the application if the visitor services to be provided are (1) similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; (2) consistent with the purposes for which the applicable CSU was established or expanded; and (3) consistent with the legal rights of any other person.

A corresponding change was made to paragraph (i) to clarify that the preference granted to historical operators applies only to the use authorized pursuant to paragraph (d). Any increase in the scope or level of use authorized pursuant to paragraph (d) for either the same or similar services is not subject to the preference granted to historical operators.

In the final rule, a sentence has been added to paragraph (e)(2)(ii) to make it clear that when only historical operators participate in a competitive process to allocate use because reductions in visitor capacity make it necessary to reduce operators in an area, they may not claim a preference as a preferred operator under § 124.

Section 251.123—Most Directly Affected Native Corporation Determination

Proposed § 251.124 (which has been redesignated at § 251.123 in the final rule) specified the process for making the most directly affected Native Corporation determination.

No comments were received on this section, and no comments were received on the related information requirements or the process for applying for most directly affected Native Corporation status.

In addition to the change in the numbering of this section in the final rule, the Department is replacing the phrases "more than one Native Corporation is" with "two or more Native Corporations are," and "within the meaning of this section" with "for purposes of the most directly affected Native Corporation determination

pursuant to this section." These changes clarify that if two or more Native Corporations are determined to be equally affected for purposes of the most directly affected Native Corporation determination, each of those Native Corporations is considered a preferred operator.

Section 251.124—Preferred Operator Competitive Special Use Authorization Procedures

Section 251.123 of the proposed rule, which has been redesignated at § 251.124 in the final rule, provided for implementation of section 1307(b) of ANILCA and would grant a preference to local residents (as defined in proposed § 251.121) and to most directly affected Native Corporations, as determined under proposed § 251.124 (§ 251.123 of the final rule), in the competitive issuance of special use authorizations to provide visitor services in CSUs. In the proposed and final rules, local residents and most directly affected Native Corporations are collectively referred to as "preferred operators" and have equal preference in the issuance of a special use authorization.

This section further provided that if a preferred operator's offer under this subpart was in the form of a joint venture, the offer would be considered valid only when it is documented to the satisfaction of the authorized officer that the preferred operator holds the controlling interest in the joint venture. Additionally, Native Corporations and local residents who submitted an offer in the form of a joint venture with other persons would retain their preferred operator status as long as the Native Corporations or local residents have the controlling interest in the joint venture. This provision would allow flexibility without compromising the statutory intent of section 1307 of ANILCA.

Section 251.123 in the proposed rule is redesignated § 251.124 in the final rule, and § 251.124 in the proposed rule is redesignated § 251.123 in the final rule. The new sequence in the final rule is more logical for two reasons: (1) The section governing the determination of most directly affected Native Corporation status (§ 251.123) now precedes the section in the final rule governing the competitive selection process (§ 251.124), where the preference for most directly affected Native Corporations is applied; and (2) the section addressing preferred operator competitive special use authorization procedures (§ 251.124) now precedes the section governing preferred operator privileges and limitations (§ 251.125).