(h) *Similar visitor service* means that visitor service authorized by the Director to be provided in a park area and determined by the Director, on a case-by-case basis, to be similar in kind and scope to an established service being provided by a historical operator.

(i) *Visitor service* means any service or activity made available for a fee, commission, brokerage or other compensation to persons who visit a park area, including such services as providing food, accommodations, transportation, tours, and guides, excepting the guiding of sport hunting and fishing. This also includes any activity where one participant/member or group of participants pays more in fees than the other participants (nonmember fees, etc.), or fees are paid to the organization that are in excess of the bona fide expenses of the trip.

§13.82 Visitor services existing on or before January 1, 1979 (historical operators).

(a) A historical operator shall have a right to continue to provide visitor services or similar services in a qualified park area under appropriate terms and conditions so long as such services are determined by the Director to be consistent with the purposes for which the park area was established. A historical operator must obtain a permit from the Director to conduct the visitor services. The permit shall be for a fixed term and shall contain such terms and conditions as are in the public interest. Failure to comply with the terms and conditions of the permit may result in cancellation of the authorization and consequent loss of historical operator rights under this subpart. Nothing in this subpart shall prohibit the Director from permitting persons in addition to historical operators to provide visitor services in park areas at the Director's discretion so long as historical operators are permitted to conduct a scope or level of visitor services equal to those provided prior to January 1, 1979, under terms and conditions consistent with this subpart. A historical operator may be permitted by the Director under separate authority to increase the scope or level of visitor services provided prior to January 1, 1979, but no historical operating rights shall be obtained in such increase.

(b) When a historical operator permit has expired, and if the visitor services permitted thereunder continue to be adequately provided and consistent with the purposes for which the park area was established as determined by the Director, the Director shall renew the permit for a fixed term consistent with such new terms and conditions as are in the public interest. Should a historical operator decline to accept an offer of renewal, its rights as a historical operator shall be considered as terminated.

(c) If the Director determines that permitted visitor services must be curtailed or reduced in scope, level or season to protect park resources, or for other purposes, the Director shall require the historical operator to make such changes in visitor services. If more than one historical operator providing the same type of visitor services is required to have those services curtailed, the Director shall establish a proportionate reduction of visitor services among all such historical operators taking into account historical operating levels and other appropriate factors so as to achieve a fair curtailment of visitor services among the historical operators. If the level of visitor services must be so curtailed that only one historical operator feasibly may continue to provide the visitor services, the Director shall select one historical operator to continue to provide the curtailed visitor services through a competitive selection process.

(d) The rights of a historical operator shall terminate if the historical operator fails to provide the visitor services under the terms and conditions of a permit issued by the Director or fails to provided the visitor services for a period of more than eleven consecutive months.

(e) The rights of a historical operator under this subpart shall terminate upon a change, after January 1, 1979, in the controlling interest of the historical operator through sale, assignment, devise, transfer or otherwise.

(f) A historical operator may apply to the Director for a permit or amended permit to provide similar visitor services. The Director shall grant the request if such visitor services are determined by the Director:

(1) To be consistent with the protection of park resources and the purposes for which the park area was established;

(2) Similar to the visitor services provided by the historical operator prior to January 1, 1979;

(3) Not to be in violation of the legal rights of any other person; and

(4) Granting the request will not result in an increase in the scope and level of service in excess of those provided by the requesting historical operator as of January 1, 1979.

(g) The Director may authorize other persons to provide visitor services in a park area in addition to historical operators.

§ 13.83 Visitor services authorized after January 1, 1979 (preferred operators).

(a) In selecting persons to provide, and in contracting for the provision of, any type of visitor services for a qualified park area, the Director will give a preference to preferred operators determined qualified to provide such a visitor service.

(b) In selecting persons to provide any type of visitor services for park areas subject to a preferred operator preference under this section, the Director will publicly solicit offers for persons to apply for an authorization, or the renewal of an authorization, to provide such visitor services pursuant to 36 CFR part 51 and other National Park Service procedures. A preferred operator must submit a responsive offer in response to such solicitation in order to effect its preference. If, as a result of the solicitation, an offer from a person other than a preferred operator is determined to be the best offer received and that offeror is determined to be capable of carrying out the terms of the authorization, a preferred operator that submitted a responsive offer shall be given an opportunity to meet the terms of the best offer received by amending its offer. If the amended offer of a preferred operator is considered by the Director as meeting the terms of the best offer, the preferred operator, if it is determined to be capable as carrying out the terms of the authorization, shall be awarded the visitor service authorization. If a preferred operator fails to meet these requirements, the Director shall award the authorization to the person who submitted the best offer in response to the solicitation. In the event this process results in more than one preferred operator having submitted an offer meeting the terms of the best offer received, the Director will select for award of the authorization that preferred operator that submitted the best offer as determined by the Director.

(c) The rights of preferred operators under this section take precedence over the right of preference granted to existing satisfactory NPS concessioners pursuant to the Concessions Policy Act (16 U.S.C. 20) and implementing regulations and procedures, but do not take precedence over the rights of historical operators as described in this subpart. Nothing in this subpart shall prohibit the Director from authorizing persons other than preferred operators to provide visitor services in park areas so long as the procedures described in this section have been followed. Preferred operators are not entitled by this section to provide all visitor services in a qualified park area.