

105TH CONGRESS
1ST SESSION

H. R. 919

To establish fair market value pricing of Federal natural assets, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1997

Mr. MILLER of California (for himself, Mr. SANDERS, Ms. WOOLSEY, Mr. MEEHAN, Mr. KENNEDY of Rhode Island, Mr. HINCHEY, Mr. YATES, Mr. BROWN of California, Mr. ANDREWS, Mrs. LOWEY, Mr. FRANK of Massachusetts, Ms. PELOSI, Mr. NADLER, Mr. MCGOVERN, Mr. SABO, Mr. KENNEDY of Massachusetts, Ms. RIVERS, Mr. STARK, Mrs. MALONEY of New York, Mr. VENTO, Ms. FURSE, Ms. ROYBAL-ALLARD, Mr. EVANS, Mr. MARKEY, Mr. ABERCROMBIE, Ms. SLAUGHTER, Mr. SCHUMER, Mr. OLVER, Mr. CLAY, Mr. PORTER, Mr. LEWIS of Georgia, Ms. ESHOO, Mr. WAXMAN, Mr. GEJDENSON, Ms. LOFGREN, and Ms. DELAURO) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committees on Agriculture, and the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish fair market value pricing of Federal natural assets, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Public Resources Deficit Reduction Act of 1997”.

4 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Fair market value for resource disposal.

Sec. 102. Fees from program beneficiaries.

Sec. 103. Revenues from sale, lease, and transfer of assets.

TITLE II—REVENUE FROM MINING CLAIMS

Sec. 201. Royalty.

Sec. 202. Abandoned minerals mine reclamation fund.

Sec. 203. Limitation on patent issuance.

Sec. 204. Mining claim maintenance requirements.

Sec. 205. Definitions.

**TITLE III—USE OR DISPOSAL OF FEDERAL NATURAL
RESOURCES**

Sec. 301. Annual domestic livestock grazing fee.

Sec. 302. Elimination of below-cost sales of timber from national forest system
lands.

Sec. 303. Timberland suitability.

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acreage.

Sec. 305. Reduction in maximum amount of payments under agricultural as-
sistance programs to reflect receipt of Federal irrigation water.

Sec. 306. Off budget expenditures.

Sec. 307. Deposit of Taylor Grazing Act receipts in Treasury.

Sec. 308. Repeal of livestock feed assistance program.

Sec. 309. Right-of-way permits.

Sec. 310. Oil and gas rentals.

Sec. 311. Improvement of minerals management service royalty collection.

TITLE IV—NATIONAL PARK CONCESSIONS

Sec. 401. Findings and policy.

Sec. 402. Definitions.

Sec. 403. Repeal of Concessions Policy Act of 1965.

Sec. 404. Concession contracts and other authorizations.

Sec. 405. Competitive selection process.

Sec. 406. Franchise fees.

Sec. 407. Use of franchise fees.

Sec. 408. Duration of contract.

Sec. 409. Transfer of contract.

Sec. 410. Protection of concessioner investment.

Sec. 411. Rates and charges to public.

Sec. 412. Concessioner performance evaluation.

Sec. 413. Recordkeeping requirements.

- Sec. 414. Exemption from certain lease requirements.
 Sec. 415. No effect on ANILCA provisions.
 Sec. 416. Implementation.
 Sec. 417. Authorization of appropriations.

1 **TITLE I—GENERAL PROVISIONS**

2 **SEC. 101. FAIR MARKET VALUE FOR RESOURCE DISPOSAL.**

3 (a) **IN GENERAL.**—Notwithstanding any other provi-
 4 sion of law, no timber, minerals, forage, or other natural
 5 resource owned by the United States, no Federally owned
 6 water, and no hydroelectric energy generated at a Federal
 7 facility may be sold, leased, or otherwise disposed of by
 8 any department, agency, or instrumentality of the United
 9 States for an amount less than fair market value, as deter-
 10 mined by such department, agency, or instrumentality.

11 (b) **EXISTING CONTRACTS, LEASES, ETC.**—

12 (1) **EXISTING ARRANGEMENTS.**—The provisions
 13 of subsection (a) shall not apply to any existing con-
 14 tract, lease, or other binding arrangement entered
 15 into before the date of the enactment of this Act un-
 16 less such contract, lease or other arrangement is re-
 17 newed or extended after such date of enactment.

18 (2) **ARRANGEMENTS ENTERED INTO IN 5-YEAR**
 19 **PERIOD.**—The provisions of subsection (a) shall take
 20 effect on the date 5 years after the date of enact-
 21 ment of this Act in the case of any contract, lease,

1 or other binding arrangement entered into or re-
2 newed or extended after such date but before the
3 date 5 years after such date.

4 (3) ARRANGEMENTS ENTERED INTO AFTER 5
5 YEARS.—The provisions of subsection (a) shall apply
6 immediately to all contracts, leases, or other binding
7 arrangements entered into or renewed or extended
8 after the date 5 years after the enactment of this
9 Act.

10 (c) WAIVER.—The President may waive the require-
11 ments of subsection (a) whenever the President deter-
12 mines that such waiver is in the national interest. The
13 President shall submit a notice to Congress containing an
14 explanation of the reasons for any such determination
15 within 60 days after the date of the determination.

16 **SEC. 102. FEES FROM PROGRAM BENEFICIARIES.**

17 (a) GENERAL AUTHORITY.—The Secretary of the In-
18 terior and the Secretary of Agriculture are each author-
19 ized to establish and collect from persons subject to pro-
20 grams administered by each such Secretary such user fees
21 as may be necessary to reimburse the United States for
22 the expenses incurred in administering such programs.
23 The aggregate amount of fees that may be assessed and
24 collected under this section by each such Secretary in any
25 fiscal year from persons subject to any such program shall

1 not exceed the aggregate amount of expenses incurred in
2 administering such program in such fiscal year.

3 (b) EFFECTIVE DATE; OIL AND GAS LEASE TRANS-
4 FERS.—The Secretary of the Interior and the Secretary
5 of Agriculture may, by rule, establish the applicable effec-
6 tive date of any fee to be imposed under this section, ex-
7 cept that fees shall be established and collected under this
8 section from each person receiving a transfer of a Federal
9 onshore oil and gas lease after the date of the enactment
10 of this section.

11 **SEC. 103. REVENUES FROM SALE, LEASE, AND TRANSFER**
12 **OF ASSETS.**

13 (a) IN GENERAL.—Section 1105(a) of chapter 11 of
14 title 31, United States Code, is amended by adding at the
15 end the following new paragraph:

16 “(31) a separate statement of—

17 “(A) projected revenues during the fiscal
18 year for which the budget is submitted from the
19 anticipated sale, lease, or transfer of any phys-
20 ical asset; and

21 “(B) the estimated price at which this
22 asset or a comparable asset would be sold in an
23 arms length transaction in the private sector;
24 asset by asset and aggregated by major functional
25 category.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall become effective for fiscal year 1998
3 and shall be fully reflected in the fiscal year 1999 budget
4 submitted by the President in February 1998 as required
5 by section 1105(a) of title 31, United States Code.

6 **TITLE II—REVENUE FROM**
7 **MINING CLAIMS**

8 **SEC. 201. ROYALTY.**

9 (a) RESERVATION OF ROYALTY.—Each person pro-
10 ducing locatable minerals (including associated minerals)
11 from any mining claim located under the general mining
12 laws, or mineral concentrates derived from locatable min-
13 erals produced from any mining claim located under the
14 general mining laws, as the case may be, shall pay a roy-
15 alty of 5 percent of the net smelter return from the pro-
16 duction of such locatable minerals or concentrates, as the
17 case may be.

18 (b) ROYALTY PAYMENTS.—Each person responsible
19 for making royalty payments under this section shall make
20 such payments to the Secretary not later than 30 days
21 after the end of the calendar month in which the mineral
22 or mineral concentrates are produced and first placed in
23 marketable condition, consistent with prevailing practices
24 in the industry.

1 (c) REPORTING REQUIREMENTS.—All persons hold-
2 ing mining claims located under the general mining laws
3 shall provide to the Secretary such information as deter-
4 mined necessary by the Secretary to ensure compliance
5 with this section, including, but not limited to, quarterly
6 reports, records, documents, and other data. Such reports
7 may also include, but not be limited to, pertinent technical
8 and financial data relating to the quantity, quality, and
9 amount of all minerals extracted from the mining claim.

10 (d) AUDITS.—The Secretary is authorized to conduct
11 such audits of all persons holding mining claims located
12 under the general mining laws as he deems necessary for
13 the purposes of ensuring compliance with the require-
14 ments of this section.

15 (e) DISPOSITION OF RECEIPTS.—All receipts from
16 royalties collected pursuant to this section shall be depos-
17 ited into the Fund established under section 202.

18 (f) COMPLIANCE.—Any person holding mining claims
19 located under the general mining laws who knowingly or
20 willfully prepares, maintains, or submits false, inaccurate,
21 or misleading information required by this section, or fails
22 or refuses to submit such information, shall be subject to
23 a civil penalty of not more than \$10,000 imposed by the
24 Secretary.

1 (g) EFFECTIVE DATE.—This section shall take effect
2 with respect to minerals produced from a mining claim
3 in calendar months beginning after the enactment of this
4 Act.

5 **SEC. 202. ABANDONED MINERALS MINE RECLAMATION**
6 **FUND.**

7 (a) ESTABLISHMENT.—(1) There is established on
8 the books of the Treasury of the United States a trust
9 fund to be known as the Abandoned Minerals Mine Rec-
10 lamation Fund (hereinafter referred to as the Fund). The
11 Fund shall be administered by the Secretary.

12 (2) The Secretary shall notify the Secretary of the
13 Treasury as to what portion of the Fund is not, in his
14 judgment, required to meet current withdrawals. The Sec-
15 retary of the Treasury shall invest such portion of the
16 Fund in public debt securities with maturities suitable for
17 the needs of such Fund and bearing interest at rates de-
18 termined by the Secretary of the Treasury, taking into
19 consideration current market yields on outstanding mar-
20 ketplace obligations of the United States of comparable
21 maturities. The income on such investments shall be cred-
22 ited to, and from a part of, the Fund.

23 (b) AMOUNTS.—The following amounts shall be cred-
24 ited to the Fund for the purposes of this title:

1 (1) All moneys received from royalties under
2 section 201 and the mining claim maintenance fee
3 under section 204 of this Act.

4 (2) All donations by persons, corporations, as-
5 sociations, and foundations for the purposes of this
6 title.

7 (c) USE AND OBJECTIVES OF THE FUND.— The Sec-
8 retary is, subject to appropriations, authorized to use
9 moneys in the Fund for the reclamation and restoration
10 of land and water resources adversely affected by past
11 mineral (other than coal and fluid minerals) and mineral
12 material mining, including but not limited to, any of the
13 following:

14 (1) Reclamation and restoration of abandoned
15 surface mined areas.

16 (2) Reclamation and restoration of abandoned
17 milling and processing areas.

18 (3) Sealing, filling, and grading abandoned deep
19 mine entries.

20 (4) Planting of land adversely affected by past
21 mining to prevent erosion and sedimentation.

22 (5) Prevention, abatement, treatment and con-
23 trol of water pollution created by abandoned mine
24 drainage.

1 (6) Control of surface subsidence due to aban-
2 doned deep mines.

3 (7) Such expenses as may be necessary to ac-
4 complish the purposes of this section.

5 (d) ELIGIBLE AREAS.—(1) Land and waters eligible
6 for reclamation expenditures under this section shall be
7 those within the boundaries of States that have lands sub-
8 ject to the general mining laws—

9 (A) which were mined or processed for minerals
10 and mineral materials or which were affected by
11 such mining or processing, and abandoned or left in
12 an inadequate reclamation status prior to the date
13 of enactment of this Act;

14 (B) for which the Secretary makes a determina-
15 tion that there is no continuing reclamation respon-
16 sibility under State or Federal laws; and

17 (C) for which it can be established that such
18 lands do not contain minerals which could economi-
19 cally be extracted through the reprocessing or remin-
20 ing of such lands.

21 (2) Notwithstanding paragraph (1), sites and areas
22 designated for remedial action pursuant to the Uranium
23 Mill Tailings Radiation Control Act of 1978 (42 U.S.C.
24 7901 and following) or which have been listed for remedial

1 action pursuant to the Comprehensive Environmental Re-
2 sponse Compensation and Liability Act of 1980 (42
3 U.S.C. 9601 and following) shall not be eligible for ex-
4 penditures from the Fund under this section.

5 (e) FUND EXPENDITURES.—Moneys available from
6 the Fund may be expended directly by the Director, Bu-
7 reau of Land Management. The Director may also make
8 such money available through grants made to the Chief
9 of the United States Forest Service, and the Director of
10 the National Park Service.

11 (f) AUTHORIZATION OF APPROPRIATIONS.—Amounts
12 credited to the Fund are authorized to be appropriated
13 for the purpose of this title without fiscal year limitation.

14 **SEC. 203. LIMITATION ON PATENT ISSUANCE.**

15 No patent shall be issued by the United States for
16 any mining or mill site claim located under the general
17 mining laws unless the Secretary determines that, for the
18 claim concerned a patent application was filed with the
19 Secretary on or before September 30, 1994, and all re-
20 quirements established under sections 2325 and 2326 of
21 the Revised Statutes (30 U.S.C. 29 and 30) for vein or
22 lode claims and sections 2329, 2330, 2331, and 2333 of
23 the Revised Statutes (30 U.S.C. 35, 36 and 37) for placer
24 claims, and section 2337 of the Revised Statutes (30

1 U.S.C. 42) for mill site claims, as the case may be, were
2 fully complied with by the applicant by that date.

3 **SEC. 204. MINING CLAIM MAINTENANCE REQUIREMENTS.**

4 (a) IN GENERAL.—(1) Effective October 1, 1998, the
5 holder of each mining claim located under the general min-
6 ing laws prior to the date of enactment shall pay to the
7 Secretary an annual claim maintenance fee of \$100 per
8 claim per calendar year.

9 (2) The holder of each mining claim located under
10 the general mining laws subsequent to the date of enact-
11 ment shall pay to the Secretary an annual claim mainte-
12 nance fee of \$125 per claim per calendar year.

13 (b) PURCHASING POWER ADJUSTMENT.—The Sec-
14 retary shall adjust the amount of the claim maintenance
15 fee payable pursuant to subsection (a) for changes in the
16 purchasing power of the dollar after the calendar year
17 1993, employing the Consumer Price Index for all urban
18 consumers published by the Department of Labor as the
19 basis for adjustment, and rounding according to the ad-
20 justment process of conditions of the Federal Civil Pen-
21 alties Inflation Adjustment Act of 1990.

22 (c) TIME OF PAYMENT.—Each claim holder shall pay
23 the claim maintenance fee payable under subsection (a)
24 for any year on or before August 31 of each year, except
25 that for the initial calendar year in which the location is

1 made, the initial claim maintenance fee shall be paid at
2 the time the location notice is recorded with the Bureau
3 of Land Management.

4 (d) OIL SHALE CLAIMS SUBJECT TO CLAIM MAINTENANCE FEES UNDER ENERGY POLICY ACT OF 1992.—
5 The section shall not apply to any oil shale claims for
6 which a fee is required to be paid under section 2511(e)(2)
7 of the Energy Policy Act of 1992 (30 U.S.C. 242(e)(2)).

8 (e) CLAIM MAINTENANCE FEES PAYABLE UNDER
9 1993 ACT.—The claim maintenance fees payable under
10 this section for any period with respect to any claim shall
11 be reduced by the amount of the claim maintenance fees
12 paid under section 10101 of the Omnibus Budget Rec-
13 onciliation Act of 1993 with respect to that claim and with
14 respect to the same period.

15 (f) WAIVER.—(1) The claim maintenance fee re-
16 quired under this section may be waived for a claim holder
17 who certifies in writing to the Secretary that on the date
18 the payment was due, the claim holder and all related par-
19 ties held not more than 10 mining claims on land open
20 to location. Such certification shall be made on or before
21 the date on which payment is due.

22 (2) For purposes of this subsection, with respect to
23 any claim holder, the term “related party” means each
24 of the following:
25

1 (A) The spouse and dependent children (as de-
2 fined in section 152 of the Internal Revenue Code of
3 1986), of the claim holder.

4 (B) Any affiliate of the claim holder.

5 (g) CO-OWNERSHIP.—Upon the failure of any one or
6 more of several co-owners to contribute such co-owner or
7 owners portion of the fee under this section, any co-owner
8 who has paid such fee may, after the payment due date,
9 give the delinquent co-owner or owners notice of such fail-
10 ure in writing (or by publication in the newspaper nearest
11 the claim for at least once a week for at least 90 days).
12 If at the expiration of 90 days after such notice in writing
13 or by publication, any delinquent co-owner fails or refused
14 to contribute his portion, his interest, in the claim shall
15 become the property of the co-owners who have paid the
16 required fee.

17 **SEC. 205. DEFINITIONS.**

18 As used in this title:

19 (1) The term “affiliate” means, with respect to
20 any person, each of the following:

21 (A) Any partner of such person.

22 (B) Any person owning at least 10 percent
23 of the voting shares of such person.

1 (C) Any person who controls, is controlled
2 by, or is under common control with such per-
3 son.

4 (2) The term “locatable minerals” means min-
5 erals not subject to disposition under any of the fol-
6 lowing:

7 (A) The Mineral Leasing Act (30 U.S.C.
8 181 and following).

9 (B) The Geothermal Steam Act of 1970
10 (30 U.S.C. 100 and following).

11 (C) The Act of July 31, 1947, commonly
12 known as the Materials Act of 1947 (30 U.S.C.
13 601 and following).

14 (D) The Mineral Leasing for Acquired
15 Lands Act (30 U.S.C. 351 and following).

16 (3) The term “net smelter return” has the
17 same meaning provided in section 613 of the Inter-
18 nal Revenue Code of 1986 (26 U.S.C. 613) for
19 “gross income from mining”.

20 (4) The term “Secretary” means the Secretary
21 of the Interior.

22 (5) The term “general mining laws” means
23 those Acts which generally comprise chapters 2,
24 12A, and 16, and sections 161 and 162 of title 30,
25 United States Code.

1 **TITLE III—USE OR DISPOSAL OF**
2 **FEDERAL NATURAL RESOURCES**

3 **SEC. 301. ANNUAL DOMESTIC LIVESTOCK GRAZING FEE.**

4 The Federal Land Policy and Management Act of
5 1976 is amended by inserting after section 401 (43 U.S.C.
6 1751) the following new section:

7 **“SEC. 401A. ESTABLISHMENT OF FAIR MARKET VALUE**
8 **GRAZING FEES.**

9 “(a) ESTABLISHMENT OF ANNUAL DOMESTIC LIVE-
10 STOCK GRAZING FEE.—(1) Notwithstanding any other
11 provision of law, the Secretary of Agriculture, with respect
12 to National Forest System lands in the 16 contiguous
13 Western States (except National Grasslands) administered
14 by the Forest Service where domestic livestock grazing is
15 permitted under applicable law, shall establish an annual
16 domestic livestock grazing fee equal to fair market value.

17 “(2) Notwithstanding any other provision of law, the
18 Secretary of the Interior, with respect to public domain
19 lands administered by the Bureau of Land Management
20 where domestic livestock grazing is permitted under appli-
21 cable law, shall establish an annual domestic livestock
22 grazing fee equal to fair market value.

23 “(b) CALCULATION OF FAIR MARKET VALUE.—(1)
24 For purposes of determining the annual domestic livestock
25 grazing fee under this section, the Secretary concerned

1 shall calculate fair market value using the following for-
 2 mula:

$$\text{Fair Market Value} = \frac{\text{Appraised Base Value} \times \text{Forage Value Index}}{100}$$

3 “(2) For purposes of the formula in paragraph (1):

4 “(A) The term ‘Forage Value Index’ means the
 5 Forage Value Index (FVI) computed annually by the
 6 Economic Research Service, United States Depart-
 7 ment of Agriculture, and set with the 1997 FVI
 8 equal to 100; and

9 “(B) The term ‘Appraised Base Value’ means
 10 the 1983 Appraisal Value conclusions for mature
 11 cattle and horses (expressed in dollars per head or
 12 per month), as determined in the 1986 report pre-
 13 pared jointly by the Secretary of Agriculture and the
 14 Secretary of the Interior entitled ‘Grazing Fee Re-
 15 view and Evaluation’, dated February 1986, on a
 16 west-wide basis using the lowest appraised value of
 17 the pricing areas adjusted for advanced payment
 18 and indexed to 1997.

19 “(c) LIMITATION ON FLUCTUATIONS OF FEES.—
 20 Notwithstanding the amount calculated under subsection
 21 (b) for a year, the domestic livestock grazing fee charged
 22 for any given year shall not increase nor decrease by more

1 than 33.3 percent from the domestic livestock grazing fee
2 for the previous year.

3 “(d) EFFECT ON EXECUTIVE ORDER.—Executive
4 Order No. 12548, dated February 14, 1986 (51 Fed. Reg.
5 5985), shall not apply to grazing fees established pursuant
6 to this section.

7 “(e) EFFECT ON GRAZING ADVISORY BOARDS.—The
8 grazing advisory boards established pursuant to Secretar-
9 ial action, notice of which was published in the Federal
10 Register on May 14, 1986 (51 Fed. Reg. 17874), are abol-
11 ished, effective as of the date of the enactment of this sec-
12 tion, and the advisory functions exercised by such boards
13 shall be exercised only by the appropriate councils estab-
14 lished under section 309 of this Act.

15 “(f) USE OF FEES AND RANGE IMPROVEMENT
16 FUNDS.—Funds appropriated pursuant to section 5 of the
17 Public Rangelands Improvement Act of 1978 (43 U.S.C.
18 1904) or any other provision of law related to disposition
19 of the Federal share of receipts from fees for grazing on
20 public domain lands or National Forest lands in the 16
21 contiguous western States shall be used for restoration
22 and enhancement of fish and wildlife habitat, for restora-
23 tion and improved management of riparian areas, and for
24 implementation and enforcement of applicable land man-
25 agement plans, allotment plans, and regulations regarding

1 the use of such lands for domestic livestock grazing. Such
2 funds shall be distributed as the Secretary concerned con-
3 siders advisable after consultation and coordination with
4 the advisory councils established pursuant to section 309
5 of this Act and other interested parties.

6 “(g) COMMENCEMENT DATE FOR FEES.—The first
7 annual domestic livestock grazing fee required by this sec-
8 tion shall apply with respect to the grazing season com-
9 mencing on March 1, 1998.

10 **SEC. 302. ELIMINATION OF BELOW-COST SALES OF TIMBER**
11 **FROM NATIONAL FOREST SYSTEM LANDS.**

12 (a) IN GENERAL.—The National Forest Management
13 Act of 1976 is amended by inserting after section 14 (16
14 U.S.C. 472a) the following new section:

15 **“SEC. 14A. ELIMINATION OF BELOW-COST TIMBER SALES**
16 **FROM NATIONAL FOREST SYSTEM LANDS.**

17 “(a) REQUIREMENT THAT SALE REVENUES EXCEED
18 COSTS.—On and after October 1, 2002, in appraising tim-
19 ber and setting a minimum bid for trees, portions of trees,
20 or forest products located on National Forest System
21 lands proposed for sale under section 14 or any other pro-
22 vision of law, the Secretary of Agriculture shall ensure
23 that the estimated cash returns to the United States
24 Treasury from each sale exceed the estimated costs to be

1 incurred by the Federal Government in the preparation
2 of the sale or as a result of the sale.

3 “(b) COSTS TO BE CONSIDERED.—For purposes of
4 estimating under this section the costs to be incurred by
5 the Federal Government from each timber sale, the Sec-
6 retary shall assign to the sale the following costs:

7 “(1) The actual appropriated expenses for sale
8 preparation and harvest administration incurred or
9 to be incurred by the Federal Government from the
10 sale and the payments to counties to be made as a
11 result of the sale.

12 “(2) A portion of the annual timber resource
13 planning costs, silvicultural examination costs, other
14 resource support costs, road design and construction
15 costs, road maintenance costs, transportation plan-
16 ning costs, appropriated reforestation costs, timber
17 stand improvement costs, forest genetics costs, gen-
18 eral administrative costs (including administrative
19 costs of the national and regional offices of the For-
20 est Service), and facilities construction costs of the
21 Federal Government directly or indirectly related to
22 the timber harvest program conducted on National
23 Forest System lands.

24 “(c) METHOD OF ALLOCATING COSTS.—The Sec-
25 retary shall allocate the costs referred to in subsection

1 (b)(2) to each unit of the National Forest System, and
2 each proposed timber sale in such unit, on the basis of
3 harvest volume.

4 “(d) TRANSITIONAL REQUIREMENTS.—To ensure the
5 elimination of all below-cost timber sales by the date speci-
6 fied in subsection (a), the Secretary shall progressively re-
7 duce the number and size of below-cost timber sales on
8 National Forest System lands as follows:

9 “(1) In fiscal years 1998 and 1999, the quan-
10 tity of timber sold in below-cost timber sales on Na-
11 tional Forest System lands shall not exceed 75 per-
12 cent of the quantity of timber sold in such sales in
13 the preceding fiscal year.

14 “(2) In fiscal year 2000, the quantity of timber
15 sold in below-cost timber sales on National Forest
16 System lands shall not exceed 65 percent of the
17 quantity of timber sold in such sales in fiscal year
18 1998.

19 “(3) In fiscal year 2001, the quantity of timber
20 sold in below-cost timber sales on National Forest
21 System lands shall not exceed 50 percent of the
22 quantity of timber sold in such sales in the fiscal
23 year 2000.

24 “(e) BELOW-COST TIMBER SALE.—For purposes of
25 this section, the term ‘below-cost timber sale’ means a sale

1 of timber in which the costs to be incurred by the Federal
2 Government exceed the cash returns to the United States
3 Treasury.”.

4 (b) FINDINGS.—Section 2 of the Forest and Range-
5 land Renewable Resources Planning Act of 1974 (16
6 U.S.C. 1600) is amended—

7 (1) by striking “and” at the end of paragraph
8 (6);

9 (2) by striking the period at the end of para-
10 graph (7) and inserting “; and”; and

11 (3) by adding at the end the following new
12 paragraph:

13 “(8) the practice of selling timber from Na-
14 tional Forest System lands for less than the cost to
15 the Federal Government of growing the timber and
16 preparing the timber for sale is not in the best inter-
17 ests of the United States, and such below-cost sales
18 should be eliminated in an orderly manner to achieve
19 a more economically and environmentally sound tim-
20 ber program for the National Forest System.”.

21 **SEC. 303. TIMBERLAND SUITABILITY.**

22 Subsection (k) of section 6 of the Forest and Range-
23 land Renewable Resources Planning Act of 1974 (16
24 U.S.C. 1604) is amended to read as follows:

1 “(k) DETERMINATION OF SUITABILITY OF LANDS
2 FOR TIMBER PRODUCTION.—

3 “(1) DETERMINATION REQUIRED.—In revising
4 land management plans developed pursuant to this
5 section, the Secretary shall identify lands within the
6 management area that are not suited for timber pro-
7 duction based on physical, economic, or other rel-
8 evant factors. The Secretary shall review the identi-
9 fications made under this paragraph during each re-
10 vision of the forest plan.

11 “(2) EVIDENCE OF ECONOMIC
12 UNSUITABILITY.—The Secretary shall identify lands
13 as economically unsuitable for timber production
14 under paragraph (1) if—

15 “(A) the expected cash returns to the
16 United States Treasury that would result from
17 the sale of standing timber on the lands do not
18 exceed the expected costs that would be in-
19 curred by the Federal Government in prepara-
20 tion or as a result of such sales; or

21 “(B) the expected cash returns to the
22 United States Treasury that would result from
23 the sale of subsequent timber stands on the
24 lands do not exceed the expected costs that

1 would be incurred by the Federal Government
2 in preparation or as a result of such sales.

3 “(3) COSTS TO BE CONSIDERED.—For purposes
4 of estimating under paragraph (2) the costs to be in-
5 curred by the Federal Government from timber sales
6 conducted on the lands being reviewed, the Secretary
7 shall assign to sales on such lands the following
8 costs:

9 “(A) The appropriated expenses for sale
10 preparation and harvest administration that
11 would be incurred by the Federal Government
12 from such sales and the payments to counties
13 that would be made as a result of such sales.

14 “(B) A portion of the annual timber re-
15 source planning costs, silvicultural examination
16 costs, other resource support costs, road design
17 and construction costs, road maintenance costs,
18 transportation planning costs, appropriated re-
19 forestation costs, timber stand improvement
20 costs, forest genetics costs, general administra-
21 tive costs (including administrative costs of the
22 national and regional offices of the Forest Serv-
23 ice), and facilities construction costs of the Fed-
24 eral Government directly or indirectly related to

1 the timber harvest program conducted on Na-
2 tional Forest System lands.

3 “(4) METHOD OF ALLOCATING COSTS.—The
4 Secretary shall allocate the costs referred to in para-
5 graph (3)(B) to each unit of the National Forest
6 System on the basis of harvest volume.

7 “(5) PROHIBITION ON TIMBER HARVESTS ON
8 UNSUITABLE LANDS.—In the case of lands identified
9 under paragraph (1) as unsuitable for timber pro-
10 duction, no timber harvesting shall occur on such
11 lands for a period of 10 years or the life of the plan,
12 whichever is greater.

13 “(6) DEFINITIONS.—For purposes of this sub-
14 section:

15 “(A) The term ‘standing timber’ means an
16 existing stand of timber that has not been har-
17 vested.

18 “(B) The term ‘subsequent timber stand’
19 means a regenerated stand of timber produced
20 on land from which standing timber has been
21 harvested.”.

1 **SEC. 304. COST OF WATER USED TO PRODUCE CROPS ON**
2 **PRODUCTION FLEXIBILITY CONTRACT ACRE-**
3 **AGE.**

4 Section 9 of the Act of August 4, 1939 (commonly
5 known as the Reclamation Project Act of 1939; 43 U.S.C.
6 485h) is amended by inserting at the end thereof the fol-
7 lowing new subsection:

8 “(g)(1) Any contract entered into under authority of
9 this section or any other provision of Federal reclamation
10 law shall require that the organization agree by contract
11 with the Secretary to pay full cost for the delivery of water
12 used in the production of any contract commodity on acre-
13 age subject to a production flexibility contract entered into
14 under section 111 of the Agricultural Market Transition
15 Act (7 U.S.C. 7211).

16 “(2) The Secretary shall announce the amount of the
17 full cost payment for the succeeding year on or before July
18 1 of each year.

19 “(3) As used in this subsection:

20 “(A) The term ‘full cost’ has the meaning given
21 such term in section 202(3) of the Reclamation Re-
22 form Act of 1982 (43 U.S.C. 390bb(3)).

23 “(B) The term ‘contract commodity’ has the
24 meaning given such term in section 102(5) of the
25 Agricultural Market Transition Act (7 U.S.C.
26 7202(5)).

1 “(4) Paragraph (1) shall apply to any contract en-
2 tered into or amended after the date of the enactment of
3 this subsection.”.

4 **SEC. 305. REDUCTION IN MAXIMUM AMOUNT OF PAYMENTS**
5 **UNDER AGRICULTURAL ASSISTANCE PRO-**
6 **GRAMS TO REFLECT RECEIPT OF FEDERAL**
7 **IRRIGATION WATER.**

8 (a) PRICE SUPPORT PROGRAMS.—Title X of the
9 Food Security Act of 1985 is amended—

10 (1) by redesignating sections 1001D (7 U.S.C.
11 1308–4) and 1001E (7 U.S.C. 1308–5) as sections
12 1001E and 1001F, respectively; and

13 (2) by inserting after section 1001C (7 U.S.C.
14 1308–3) the following new section:

15 **“SEC. 1001D. REDUCTION OF PAYMENT LIMITATIONS TO**
16 **REFLECT RECEIPT OF FEDERAL IRRIGATION**
17 **WATER.**

18 “(a) REDUCTION OF PAYMENT LIMITATIONS RE-
19 QUIRED.—If a person subject to section 1001 receives
20 Federal irrigation water for agricultural purposes from the
21 operation of a Federal reclamation project, the payment
22 limitations specified in paragraphs (1) and (2) of such sec-
23 tion and applicable to such person shall be reduced for
24 the year in which such person receives irrigation water.
25 The amount of the reduction shall be equal to the total

1 value during that year of the subsidy portion of the con-
2 tract with such person for the delivery of the irrigation
3 water.

4 “(b) DETERMINATION OF SUBSIDY PORTION OF
5 WATER CONTRACT.—The subsidy portion of an irrigation
6 water delivery contract is equal to the amount by which
7 full cost for the delivery of the irrigation water exceeds
8 the actual contract price for the delivery of the water.

9 “(c) DEFINITIONS.—For purposes of this section, the
10 terms ‘contract’, ‘full cost’, ‘irrigation water’, and ‘project’
11 have the meanings given such terms in section 202 of the
12 Reclamation Reform Act of 1982 (43 U.S.C. 390bb).”.

13 (b) NONINSURED CROP DISASTER ASSISTANCE.—
14 Section 196(i) of the Federal Agriculture Improvement
15 and Reform Act of 1996 (7 U.S.C. 7333(i)) is amended—

16 (1) by redesignating paragraph (5) as para-
17 graph (6); and

18 (2) by inserting after paragraph (4) the follow-
19 ing new paragraph:

20 “(5) EFFECT OF RECEIPT OF IRRIGATION
21 WATER.—

22 “(A) REDUCTION OF PAYMENT LIMITA-
23 TION.—If a person who receives payments
24 under this section also receives, during the

1 same year, Federal irrigation water for agricul-
2 tural purposes from the operation of a Federal
3 reclamation project, the payment limitation
4 specified in paragraph (2) for such person shall
5 be reduced for that year. The amount of the re-
6 duction shall be equal to the total value during
7 that year of the subsidy portion of the contract
8 with such person for the delivery of the irriga-
9 tion water.

10 “(B) DETERMINATION OF SUBSIDY POR-
11 TION OF WATER CONTRACT.—The subsidy por-
12 tion of an irrigation water delivery contract is
13 equal to the amount by which full cost for the
14 delivery of the irrigation water exceeds the ac-
15 tual contract price for the delivery of the water.

16 “(C) DEFINITIONS.—For purposes of this
17 paragraph, the terms ‘contract’, ‘full cost’, ‘irri-
18 gation water’, and ‘project’ have the meanings
19 given such terms in section 202 of the Reclama-
20 tion Reform Act of 1982 (43 U.S.C. 390bb).”.

21 (c) CONFORMING AMENDMENTS.—Section
22 1001(5)(A) of the Food Security Act of 1985 (7 U.S.C.
23 1308(5)(A)) is amended by striking “through 1001C” and
24 inserting “through 1001D”.

1 **SEC. 306. OFF BUDGET EXPENDITURES.**

2 (a) KNUTSON-VANDENBERG FUND.—Section 3 of
3 the Act of June 9, 1930 (commonly known as the
4 Knutson-Vandenberg Act; 16 U.S.C. 576b), is amended
5 by striking “and shall constitute a special fund, which is
6 hereby appropriated and made available until expended,”
7 in the second sentence and inserting “and are authorized
8 to be appropriated”.

9 (b) DEPOSITS FROM BRUSH DISPOSAL.—The para-
10 graph relating to deposits from brush disposal under the
11 heading “FOREST SERVICE” in the Act of August 11, 1916
12 (39 Stat. 462; 16 U.S.C. 490), is amended by striking
13 “and constitute a special fund, which is hereby appro-
14 priated and shall remain available until expended” and in-
15 serting “and are authorized to be appropriated for the
16 purpose of disposing of such brush and other debris”.

17 (c) NATIONAL FORESTS ROADS AND TRAILS.—Sec-
18 tion 7 of Public Law 88–657 (commonly known as the
19 Forest Roads and Trails Act; 16 U.S.C. 538) is amended
20 by striking “may be placed in a fund to be available” and
21 inserting “are authorized to be appropriated”.

22 (d) TIMBER SALVAGE SALE FUND.—Section 303(d)
23 of Public Law 96–451 (16 U.S.C. 1606a) is amended by
24 striking “The Secretary of Agriculture” and inserting “In
25 such amounts as are provided in advance in appropriations
26 Acts, the Secretary of Agriculture”.

1 **SEC. 307. DEPOSIT OF TAYLOR GRAZING ACT RECEIPTS IN**
2 **TREASURY.**

3 Section 10 of the Act of June 28, 1934 (commonly
4 known as the Taylor Grazing Act; 43 U.S.C. 315i), is
5 amended by striking all after “miscellaneous receipts” and
6 inserting a period.

7 **SEC. 308. REPEAL OF LIVESTOCK FEED ASSISTANCE PRO-**
8 **GRAM.**

9 The Emergency Livestock Feed Assistance Act of
10 1988 (title VI of the Agricultural Act of 1949; 7 U.S.C.
11 1471–1471j) is repealed.

12 **SEC. 309. RIGHT-OF-WAY PERMITS.**

13 (a) IN GENERAL.—No permit, lease, or authorization
14 for the use of any area of the public lands or National
15 Forests for rights-of-way (including rights-of-way for
16 power lines, oil and gas pipelines, water conveyances, and
17 other utility lines) shall remain in force and effect after
18 October 1, 1997, unless, by such date, and by October
19 1 of each year thereafter, the holder of such permit, lease,
20 or authorization pays to the Secretary of the Interior or
21 the Secretary of Agriculture, as appropriate, an amount
22 equal to the fair market value, as determined by such Sec-
23 retary, of the right to use and occupy such area for such
24 purposes.

25 (b) DEFINITION.—For the purposes of this section,
26 the term “public lands” shall have the same meaning as

1 defined in section 103(e) of the Federal Land Policy Man-
2 agement Act of 1976 (43 U.S.C. 1702(e)).

3 **SEC. 310. OIL AND GAS RENTALS.**

4 The Mineral Leasing Act (30 U.S.C. 181 et seq.) is
5 amended as follows:

6 (1) In section 14 by striking out “a rental of
7 \$1 per acre” and inserting “a rental established by
8 the Secretary of the Interior” and by adding the fol-
9 lowing at the end thereof: “The Secretary shall es-
10 tablish fair market value rental fees under this sec-
11 tion based upon the rental fees which would be
12 charged in arm’s length transactions for comparable
13 leases of oil and gas resources on non-Federal
14 land.”.

15 (2) In section 17(d) by striking out “rental of
16 not less than \$1.50 per acre per year for the first
17 through fifth years of the lease and not less than \$2
18 per acre per year for each year thereafter” and in-
19 sserting “rental established by the Secretary of the
20 Interior” and by adding the following at the end
21 thereof: “The Secretary shall establish fair market
22 value rental fees under this section based upon the
23 rental fees which would be charged in arms length
24 transactions for comparable leases of oil and gas re-
25 sources on non-Federal land.”.

1 (3) In section 21(a) by striking out “rental,
2 payable at the beginning of each year, at the rate of
3 50 cents per acre per annum, for the lands included
4 in the lease,” and inserting “rental established by
5 the Secretary of the Interior” and by adding the fol-
6 lowing at the end thereof: “The Secretary shall es-
7 tablish fair market value rental fees under this sec-
8 tion based upon the rental fees which would be
9 charged in arms length transactions for comparable
10 leases on non-Federal land.”.

11 (4) In section 31(e)(2) by striking “rate of not
12 less than \$10 per acre per year, or the inclusion in
13 a reinstated lease issued pursuant to the provisions
14 of section 17(c) of this Act of a requirement that fu-
15 ture rentals shall be at a rate not less than \$5 per
16 acre per year” and inserting “fair market value rate
17 (but not less than \$10 per acre per year)”.

18 (5) In section 31(f)(3) by striking out “of not
19 less than \$5 per acre per year” and inserting “es-
20 tablished by the Secretary at fair market value
21 based upon the rental fees which would be charged
22 in arms length transactions for comparable leases on
23 non-Federal land”.

1 **SEC. 311. IMPROVEMENT OF MINERALS MANAGEMENT**
2 **SERVICE ROYALTY COLLECTION.**

3 The Federal Oil and Gas Royalty Simplification and
4 Fairness Act of 1996 (Public Law No. 104–185; 30
5 U.S.C. 1701 et seq.) is amended by adding the following
6 new subsection after subsection (l):

7 “(m) ASSESSMENT FOR UNDERREPORTING OF ROY-
8 ALTY.—(1) If there is any underreporting of royalty owed
9 on production from any lease for any production month,
10 the Secretary may make an assessment of 20 percent of
11 the amount of that underreporting if any of the following
12 circumstances occurs:

13 “(A) For a Federal lease, the underreporting
14 exceeds 10 percent of the value of production which
15 should have been reported and exceeds \$1,500, or
16 the underreporting exceeds 5 percent of the value of
17 production which should have been reported and ex-
18 ceeds \$15,000.

19 “(B) For an Indian lease, the underreporting
20 exceeds 10 percent of the value of production which
21 should have been reported and exceeds \$125.

22 “(C) For either a Federal or Indian lease, no
23 royalty was paid on production from that lease for
24 the production month immediately preceding the
25 month for which the underreporting was submitted,

1 regardless of the amount of the underreporting or
2 the amount of royalty owed.

3 “(2) For purposes of this subsection, the term
4 ‘underreporting’ means the amount by which the royalty
5 on the value of the production which should have been re-
6 ported exceeds the royalty on the value of the production
7 which was reported.

8 “(3) The Secretary shall not impose the assessment
9 specified in paragraph (1) if the underreporting is cor-
10 rected before the date the person against whom the assess-
11 ment is made receives written notice from the Secretary
12 that an underreporting may have occurred.

13 “(4) The Secretary shall not impose the assessment
14 specified in paragraph (1) with respect to an underreport-
15 ing which is corrected in the course of performing an order
16 to correct royalty accounting and recompute and pay roy-
17 alties due. This exception does not apply to the specific
18 instances of underreporting discovered during audit which
19 formed the basis of the order to recompute and pay.

20 “(5)(A) The Secretary shall waive the portion of an
21 assessment specified in paragraph (1) attributable to that
22 portion of the underreporting for which a person dem-
23 onstrates that—

1 “(i) the person had substantial authority for re-
2 porting royalty on the value of the production on the
3 basis on which it was reported, or

4 “(ii) the person meets any other exception
5 which the Secretary may, by rule, establish.

6 “(B) For purposes of this paragraph, the term ‘sub-
7 stantial authority’ means any of the following:

8 “(i) A controlling judicial or administrative de-
9 cision which has not been reversed, vacated, or over-
10 ruled, or a controlling regulation.

11 “(ii) A body of judicial or administrative deci-
12 sions or regulations which provide a reasoned basis
13 to support the person’s action. Such a reasoned
14 basis must be more than a merely arguable theory
15 which is unlikely to prevail in court upon a complete
16 review of the relevant facts and authorities.

17 “(iii) A legal question of first impression.

18 “(6) Interest shall not accrue on the amount of an
19 assessment under this subsection during the pendency of
20 any administrative appeal of the assessment which may
21 be allowed by rule. No hearing on the record in such ap-
22 peal shall be necessary before an assessment is made. No
23 surety instrument shall be required to secure the amount
24 of the assessment pending administrative appeal.

1 “(7) An assessment under this subsection shall apply
2 only to an underreporting occurring after the date of en-
3 actment of this subsection.

4 “(8) Notwithstanding any provision of section 206 of
5 this Act, all assessments collected under this subsection
6 shall be deposited to the same accounts in the Treasury
7 or paid to the same recipients in the same manner as the
8 royalty with respect to which such assessment is made.

9 “(9) For purposes of this subsection, the definitions
10 in section 2 of this Act shall be deemed to also apply to
11 coal, any other mineral, geothermal steam, or associated
12 geothermal resources.”.

13 **TITLE IV—NATIONAL PARK** 14 **CONCESSIONS**

15 **SEC. 401. FINDINGS AND POLICY.**

16 (a) FINDINGS.—In furtherance of the Act of August
17 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–
18 4), which directs the Secretary of the Interior to admin-
19 ister areas of the National Park System in accordance
20 with the fundamental purpose of conserving their scenery,
21 wildlife, natural and historic objects, and providing for
22 their enjoyment in a manner that will leave them
23 unimpaired for the enjoyment of future generations, the
24 Congress finds that the preservation and conservation of

1 park resources and values requires that such public ac-
2 commodations, facilities, and services within such areas as
3 the Secretary, in accordance with this Act, determines nec-
4 essary and appropriate—

5 (1) should be provided only under carefully con-
6 trolled safeguards against unregulated and indis-
7 criminate use so that visitation will not unduly im-
8 pair park resources and values; and

9 (2) should be limited to locations and designs
10 consistent to the highest practicable degree with the
11 preservation and conservation of park resources and
12 values.

13 (b) POLICY.—It is the policy of the Congress that—

14 (1) development on Federal lands within a park
15 shall be limited to those facilities that the Secretary
16 determines are necessary and appropriate for public
17 use and enjoyment of the park in which such facili-
18 ties and services are located;

19 (2) development within a park should be con-
20 sistent to the highest practicable degree with the
21 preservation and conservation of the park's re-
22 sources and values;

23 (3) park facilities and services the Secretary de-
24 termines suitable to be provided by parties other
25 than the Secretary should be provided by private

1 persons, corporations, or other entities, except when
2 no private interest is qualified and willing to provide
3 such facilities and services;

4 (4) if the Secretary determines that develop-
5 ment should occur within a park, such development
6 shall be designed, located, and operated in a manner
7 that is consistent with the purposes for which such
8 park was established;

9 (5) the right to provide such services and to de-
10 velop or utilize facilities should be awarded to the
11 person, corporation, or entity submitting the best
12 proposal through a competitive selection process;
13 and

14 (6) such facilities or services should be provided
15 to the public at reasonable rates.

16 **SEC. 402. DEFINITIONS.**

17 As used in this title:

18 (1) The term “concessioner” means a person,
19 corporation, or other entity to whom a concession
20 contract has been awarded.

21 (2) the term “concession contract” means a
22 contract, or permit, (but not an authorization issued
23 pursuant to section 404(b) of this title) to provide
24 facilities or services, or both, at a park.

1 (3) The term “facilities” means improvements
2 to real property within parks used to provide accom-
3 modations, facilities, or services to park visitors.

4 (4) The term “franchise fee” means the fee re-
5 quired by a concession contract to be paid to the
6 United States in consideration for the privileges af-
7 farded by such contract to the holder thereof, which
8 may be expressed as a percentage of revenues de-
9 rived by the contract holder from activities author-
10 ized by the contract, and which shall be in addition
11 to fees required to be paid to the United States for
12 the use of federally-owned buildings or other facili-
13 ties.

14 (5) The term “fund” means the Park Improve-
15 ment Fund established under section 8(b).

16 (6) The term “park” means a unit of the Na-
17 tional Park System.

18 (7) The term “proposal” means the complete
19 proposal for a concession contract offered by a po-
20 tential or existing concessioner in response to the
21 minimum requirements for the contract established
22 by the Secretary.

23 (8) The term “Secretary” means the Secretary
24 of the Interior.

1 **SEC. 403. REPEAL OF CONCESSIONS POLICY ACT OF 1965.**

2 (a) REPEAL.—The Act of October 9, 1965, Public
3 Law 89–249 (79 Stat. 969, 16 U.S.C. 20–20g), entitled
4 “An Act relating to the establishment of concession poli-
5 cies in the areas administered by National Park Service
6 and for other purposes”, is hereby repealed. The repeal
7 of such Act shall not affect the validity of any contract
8 entered into under such Act, but the provisions of this title
9 shall apply to any such contract except to the extent such
10 provisions are inconsistent with the express terms and
11 conditions of the contract. Nothing in this title that is in-
12 consistent with a prospectus issued before January 27,
13 1995, shall apply to the contract with respect to which
14 such prospectus was issued. The Secretary is authorized
15 to award a concession contract prior to promulgation of
16 new regulations to implement this title if the Secretary
17 determines that protection of public health and safety war-
18 rant such action, provided that such contract is consistent
19 with this title.

20 (b) TRANSITION.—Nothing in this Act that is incon-
21 sistent with a prospectus issued before April 1, 1994, shall
22 apply to the contract with respect to which such prospec-
23 tus was issued. The Secretary is authorized to award a
24 concession contract prior to promulgation of new regula-
25 tions to implement this Act if the Secretary determines
26 that protection of public health and safety warrant such

1 action, provided that such contract is consistent with this
2 Act.

3 (c) CONFORMING AMENDMENT.—The fourth sen-
4 tence of section 3 of this Act of August 25, 1916 (16
5 U.S.C. 3; 39 Stat. 535) is amended by striking all through
6 “no natural” and inserting in lieu thereof, “No natural”.

7 **SEC. 404. CONCESSION CONTRACTS AND OTHER AUTHOR-**
8 **IZATIONS.**

9 (a) CONCESSIONS.—(1) Subject to the findings and
10 policy stated in section 401 of this title and the provisions
11 of this section, the Secretary may award concession con-
12 tracts that authorize private persons, corporations, or
13 other entities to provide services to park visitors and to
14 utilize facilities if the Secretary determines that such
15 award is the appropriate means for such authorization.

16 (2) Concession contracts shall be awarded only to the
17 extent that the Secretary finds that the services to be pro-
18 vided and the facilities to be utilized pursuant to each such
19 contract are necessary and appropriate for the accommo-
20 dation of visitors to a park.

21 (3) The provision of services and the utilization of
22 facilities pursuant to concession contracts shall be consist-
23 ent with all applicable requirements of law, including laws
24 relating generally to the administration and management
25 of units of the National Park Service, and with the general

1 management plan, concessions plan, and other relevant
2 plans developed by the Secretary for the relevant park.

3 (b) OTHER AUTHORIZATIONS.—(1) To the extent
4 specified in this subsection, the Secretary, upon request,
5 may authorize a private person, corporation, or other en-
6 tity to provide services to park visitors otherwise than by
7 award of a concession contract.

8 (2)(A) The authority of this subsection may be used
9 only to authorize provision of services to park visitors that
10 the Secretary determines have minimal impact on park re-
11 sources and values and will be consistent with the pur-
12 poses for which the park was established and with all ap-
13 plicable management plans for such park.

14 (B) The Secretary shall require payment of a reason-
15 able fee for issuance of an authorization under this sub-
16 section. The fees shall remain available without further
17 appropriation to be used to recover the costs of managing
18 and administering this subsection.

19 (C) The Secretary shall require that the provision of
20 services under such an authorization be accomplished in
21 a manner consistent to the highest practicable degree with
22 the preservation and conservation of park resources and
23 values.

1 (D) The Secretary shall take appropriate steps to
2 limit the liability of the United States arising from the
3 provision of services under such an authorization.

4 (E) The Secretary shall no authority under this sub-
5 section to issue more authorizations than are consistent
6 with the preservation and proper management of park re-
7 sources and values, and shall establish such other condi-
8 tions for issuance of such an authorization as the Sec-
9 retary determines appropriate for protection of visitors,
10 provision of adequate and appropriate visitor services, and
11 protection and proper management of the resources and
12 values of the National Park System.

13 (3) Any authorization issued under this subsection
14 shall be limited to commercial operations with annual
15 gross revenues of not more than \$25,000 resulting from
16 the services provided within the park pursuant to such au-
17 thorization.

18 (4) The term of any authorization issued under this
19 subsection shall not exceed 2 years.

20 (5) An entity seeking or obtaining an authorization
21 pursuant to this subsection shall not be precluded from
22 also submitting proposals for concession contracts.

1 **SEC. 405. COMPETITIVE SELECTION PROCESS.**

2 (a) IN GENERAL.—(1) Except as provided in sub-
3 section (b), and consistent with the provisions of sub-
4 section (g), any concession contract entered into pursuant
5 to this title shall be awarded to the person submitting the
6 best proposal, as determined by the Secretary through the
7 competitive selection process specified in this section.

8 (2) Within 180 days after the date of enactment of
9 this title, the Secretary shall promulgate appropriate regu-
10 lations establishing a process to implement this section.

11 (3) The regulations referred to in paragraph (2) shall
12 include provisions for establishing a method or procedure
13 for the resolution of disputes between the Secretary and
14 a concessioner in those instances where the Secretary has
15 been unable to meet conditions or requirements or provide
16 such services, if any, as set forth in a prospectus pursuant
17 to sections 405(c)(2) (D) and (E).

18 (b) TEMPORARY CONTRACT.—Notwithstanding the
19 provisions of subsection (a), the Secretary may award on
20 a noncompetitive basis a temporary concession contract if
21 the Secretary determines such an award to be necessary
22 in order to avoid interruption of services to the public at
23 a park. Prior to making such a determination, the Sec-
24 retary shall take all reasonable and appropriate steps to
25 consider alternative actions to avoid such interruptions.

1 (c) PROSPECTUS.—(1) Prior to soliciting proposals
2 for a concession contract at a park, the Secretary shall
3 prepare a prospectus soliciting proposals, shall publish a
4 notice of its availability at least once in such local or na-
5 tional newspapers or trade publications as the Secretary
6 determines appropriate, and shall make such prospectus
7 available upon request to all interested parties.

8 (2) The prospectus shall include, but need not be lim-
9 ited to, the following information:

10 (A) The minimum requirements for such con-
11 tract, as set forth in subsection (d).

12 (B) The terms and conditions of the existing
13 concession contract awarded for such park, if any,
14 including all fees and other forms of compensation
15 provided to the United States by the concessioner.

16 (C) Other authorized facilities or services which
17 may be included in a proposal.

18 (D) Facilities and services to be provided by the
19 Secretary to the concessioner, if any, including but
20 not limited to, public access, utilities, and buildings.

21 (E) Minimum public services to be offered with-
22 in a park by the Secretary, including but not limited
23 to, interpretive programs, campsites, and visitor cen-
24 ters.

1 (F) Such other information related to the con-
2 cessions operation as is provided by the Secretary
3 pursuant to a concession contract or is otherwise
4 available to the Secretary, as the Secretary deter-
5 mines is necessary to allow for the submission of
6 competitive proposals.

7 (d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No
8 proposal shall be considered which fails to meet the mini-
9 mum requirements included in the prospectus. Such mini-
10 mum requirements shall include payment to the United
11 States of a franchise fee and shall also include, but need
12 not be limited to, the following:

13 (A) The minimum acceptable franchise fee, fees
14 for use of any Federal buildings or other facilities,
15 and any other fees to be paid to the United States.

16 (B) The duration of the contract.

17 (C) Any facilities, services, or capital invest-
18 ments required to be provided by the concessioner.

19 (D) Measures that will be required in order to
20 ensure the protection and preservation of park re-
21 sources and values.

22 (2) The Secretary may reject any proposal, notwith-
23 standing the amount of franchise fee offered, if the Sec-
24 retary determines that the person, corporation, or entity
25 making such proposal is not qualified, is likely to provide

1 unsatisfactory service, or that the proposal is not suffi-
2 ciently responsive to the objectives of protecting and pre-
3 serving park resources and of providing necessary and ap-
4 propriate facilities or services to the public at reasonable
5 rates.

6 (3) If all proposals submitted to the Secretary either
7 fail to meet the minimum requirements or are rejected by
8 the Secretary, the Secretary shall establish new minimum
9 contract requirements and re-initiate the competitive se-
10 lection process pursuant to this section.

11 (e) SELECTION OF BEST PROPOSAL.—(1) In select-
12 ing the best proposal, the Secretary shall consider the fol-
13 lowing principal factors:

14 (A) The responsiveness of the proposal to the
15 objectives of protecting and preserving park re-
16 sources and of providing necessary and appropriate
17 facilities and services to the public at reasonable
18 rates.

19 (B) The experience, expertise, and related back-
20 ground of the person, corporation, or other entity
21 submitting the proposal, including whether the per-
22 son, corporation, or entity submitted the proposal
23 has established a record of outstanding performance
24 in providing the same or similar facilities or services.

1 (C) The financial capability of the person, cor-
2 poration, or entity submitting the proposal.

3 (D) The proposed franchise fee: *Provided*, That
4 consideration of revenue to the United States shall
5 be subordinate to the objectives of protecting and
6 preserving park resources including cultural re-
7 sources, and of providing necessary and appropriate
8 facilities or services to the public at reasonable rates.

9 (2) The Secretary may also consider such secondary
10 factors as the Secretary deems appropriate.

11 (3) In developing regulations to implement this title,
12 the Secretary shall consider the extent to which plans for
13 employment of Indians (including Native Alaskans) and
14 involvement of businesses owned by Indians, Indian tribes,
15 or Native Alaskans in the operation of concession con-
16 tracts should be identified as a factor in the selection of
17 a best offer under this section.

18 (f) CONGRESSIONAL NOTIFICATION.—(1) The Sec-
19 retary shall submit any proposed concession contract with
20 anticipated annual gross receipts in excess of \$1,000,000
21 (indexed to 1993 constant dollars) or a duration in excess
22 of ten years to the Committee on Energy and Natural Re-
23 sources of the United States Senate and the Committee
24 on Resources of the United States House of Representa-
25 tives.

1 (2) The Secretary shall not award any such proposed
2 contract until at least 60 days subsequent to the submis-
3 sion thereof to both Committees.

4 (g) NO PREFERENTIAL RIGHT OF RENEWAL.—(1)
5 Except as provided in paragraph (2), the Secretary shall
6 not grant a preferential right to a concessioner to renew
7 a concession contract executed pursuant to this title.

8 (2)(A) The Secretary shall grant a preferential right
9 of renewal with respect to a concession contract covered
10 by subsection (h) and (i) subject to the requirements of
11 subsection (h) or (i), as appropriate.

12 (B) As used in this paragraph and subsections (h)
13 and (i), the term “preferential right of renewal” means
14 that the Secretary shall allow a concessioner satisfying the
15 requirements of this paragraph the opportunity to match
16 the terms and conditions of any competing proposal which
17 the Secretary determines to be the best offer.

18 (C) A concessioner who exercises a preferential right
19 of renewal in accordance with the requirements of this
20 paragraph shall be entitled to award of the new concession
21 contract with respect to which such right is exercised.

22 (h) OUTFITTING AND GUIDE CONTRACTS.—(1) Ex-
23 cept as provided in subsection (i), the provisions of sub-
24 section (g)(2) shall apply only—

25 (A) to a concession contract—

1 (i) which solely authorizes a concessioner
2 to provide outfitting, guide, river running, or
3 other substantially similar services within a
4 park; and

5 (ii) which does not grant such concessioner
6 any interest in any structure, fixture, or im-
7 provement pursuant to section 11 of this Act;
8 and

9 (B) where the concessioner has been awarded
10 an annual rating of “Excellent” in at least 50 per-
11 cent of the annual ratings during the term of the
12 contract;

13 (C) where the concessioner has not received any
14 annual unsatisfactory ratings during the term of the
15 contract; and

16 (D) where the Secretary determines that the
17 concessioner has submitted a responsive proposal for
18 a new contract which satisfies the minimum require-
19 ments established by the Secretary pursuant to sec-
20 tion 6 of this Act.

21 (2) In granting a preferential right of renewal pursu-
22 ant to subsection (g)(2), the Secretary shall not require
23 concessioner to match any portion of a proposed franchise
24 fee which exceeds by more than 10 percent the minimum

1 fee established by the Secretary in the prospectus for such
2 contract.

3 (3)(A) With respect to a concession contract (or ex-
4 tension thereof) covered by this subsection, which is in ef-
5 fect on the date of enactment of this Act, the provisions
6 of this paragraph shall apply if the holder of such con-
7 tract, under the laws and policies in effect on the day be-
8 fore the date of enactment of this Act, would have been
9 entitled to a preferential right of renewal upon the expira-
10 tion of such contract.

11 (B) Upon the expiration of a concession contract (or
12 extension thereof) covered by this paragraph, the Sec-
13 retary, with respect to the award of a new concession con-
14 tract to provide the same or substantially similar services
15 as those authorized by the previous contract or extension,
16 shall allow the holder of such contract or extension the
17 right to exercise a preferential right of renewal to the
18 same extent as would have been the case under the laws
19 and policies in effect on the day before the date of enact-
20 ment of this Act.

21 (4)(A) In promulgating regulations to implement this
22 subsection, the Secretary shall include a rating category
23 of “Excellent”, and shall establish clear and achievable
24 standards necessary for the award of such rating, includ-
25 ing but not necessarily limited to criteria relating to—

1 (i) protection of the park's resources and val-
2 ues;

3 (ii) furtherance of the educational, recreational,
4 and other purposes for which the Secretary manages
5 the park; and

6 (iii) the adequacy of services provided to park
7 visitors.

8 (B) The Secretary shall take appropriate steps to en-
9 able all holders of contracts covered by this subsection,
10 and all parties seeking to obtain such contracts, to be
11 aware of the criteria established pursuant to this para-
12 graph.

13 (i) CONTRACTS WITH ANNUAL GROSS RECEIPTS
14 UNDER \$500,000.—(1) The provisions of subsection
15 (g)(2) shall also apply to a concession contract—

16 (A) which the Secretary estimates will result in
17 annual gross receipts of less than \$500,000;

18 (B) where the Secretary has determined that
19 the concessioner has operated satisfactorily during
20 the term of the contract (including any extensions
21 thereof); and

22 (C) that the concessioner has submitted a re-
23 sponsive proposal for a new concession contract

1 which satisfies the minimum requirements estab-
2 lished by the Secretary pursuant to section 6 of this
3 Act.

4 (2) The provisions of this subsection shall not apply
5 to a concession contract covered by subsection (h).

6 **SEC. 406. FRANCHISE FEES.**

7 (a) **IN GENERAL.**—Franchise fees, however stated,
8 shall not be less than the minimum franchise fee estab-
9 lished by the Secretary for each contract. The minimum
10 franchise fee shall be determined in a manner that will
11 provide the concessioner with a reasonable opportunity to
12 realize a profit on the operation as a whole, commensurate
13 with the capital invested and the obligations assumed.

14 (b) **MULTIPLE CONTRACTS WITHIN A PARK.**—If mul-
15 tiple concession contracts are awarded to authorize conces-
16 sioners to provide the same outfitting, guide, river run-
17 ning, or other similar services at the same approximate
18 location within a specific park, the Secretary shall estab-
19 lish a standardized schedule of franchise fees for all such
20 contracts, subject to periodic review and revision by the
21 Secretary.

22 **SEC. 407. USE OF FRANCHISE FEES.**

23 (a) **SPECIAL ACCOUNT.**—Except as provided in sub-
24 section (b), all receipts including fees for use of Federally-
25 owned buildings or other facilities collected pursuant to

1 this title shall be covered into a special account established
2 in the Treasury of the United States. Amounts covered
3 into such account in a fiscal year shall be available for
4 expenditure, subject to appropriation, solely as follows:

5 (1) 50 percent shall be allocated among the
6 units of the National Park System in the same pro-
7 portion as franchise fees collected from a specific
8 unit bears to the total amount covered into the ac-
9 count for each fiscal year, to be used for resource
10 management and protection, maintenance activities,
11 interpretation, and research.

12 (2) 50 percent shall be allocated among the
13 units of the National Park System on the basis of
14 need, in a manner to be determined by the Sec-
15 retary, to be used for resource management and pro-
16 tection, maintenance activities, interpretation, and
17 research.

18 (b) PARK IMPROVEMENT FUND.—(1) In lieu of col-
19 lecting all or a portion of the franchise fees that would
20 otherwise be collected pursuant to the concession contract,
21 the Secretary shall, where the Secretary determines it to
22 be practicable, require a concessioner to establish a Park
23 Improvement Fund in which the concessioner shall deposit
24 the franchise fees that would otherwise be required by the
25 contract.

1 (2) The fund shall be maintained by the concessioner
2 in an interest bearing account in a federally insured finan-
3 cial institution. The concessioner shall maintain the fund
4 separately from any other funds or accounts and shall not
5 co-mingle the monies in the fund with any other monies.
6 The Secretary may establish such other terms, conditions,
7 or requirements as the Secretary determines to be nec-
8 essary to ensure the financial integrity of the fund.

9 (3) Monies from the fund, including interest, shall be
10 expended solely for activities and projects within the park
11 which are consistent with the park's general management
12 plan, concessions plan, and other applicable plans, and
13 which the Secretary determines will enhance public use,
14 safety, and enjoyment of the park, including but not lim-
15 ited to projects which directly or indirectly support conces-
16 sion facilities or services required by the concession con-
17 tract, but no expenditure from the fund shall have the ef-
18 fect of creating or increasing any compensable interest of
19 any concessioner in any such facilities. A concessioner
20 shall not be allowed to make any advances or credits to
21 the fund.

22 (4) A concessioner shall not be granted any interest
23 in improvements made from fund expenditures, including
24 any interest granted pursuant to section 310 of this title.

1 (5) Nothing in this subsection shall affect the obliga-
2 tion of a concessioner to insure, maintain, and repair any
3 structure, fixture, or improvement assigned to such con-
4 cessioner and to insure that such structure, fixture, or im-
5 provement fully complies with applicable safety and health
6 laws and regulations.

7 (6) The concessioner shall maintain proper records
8 for all expenditures made from the fund. Such records
9 shall include, but not be limited to invoices, bank state-
10 ments, canceled checks, and such other information as the
11 Secretary may require.

12 (7) The concessioner shall annually submit to the
13 Secretary a statement reflecting total activity in the fund
14 for the preceding financial year. The statement shall re-
15 flect monthly deposits, expenditures by project, interest
16 earned, and such other information as the Secretary re-
17 quires.

18 (8) A fund established pursuant to this subsection
19 may not be used for any capital expenditure exceeding
20 \$2,500,000 in any fiscal year unless such expenditure
21 from a fund has been authorized in advance by Act of Con-
22 gress. The Secretary shall annually inform the Congress
23 concerning the actual and projected use of moneys in each
24 fund established pursuant to this subsection.

1 (9) Upon the termination of a concession contract,
2 or upon the sale or transfer of such contract, any remain-
3 ing balance in the fund shall be transferred by the conces-
4 sioner to the successor concessioner, to be used solely as
5 set forth in this subsection. In the event there is no succes-
6 sor concessioner, the fund balance shall be deposited into
7 the special account established in subsection (a).

8 **SEC. 408. DURATION OF CONTRACT.**

9 (a) **MAXIMUM TERM.**—A concession contract entered
10 into pursuant to this title shall be awarded for a term not
11 to exceed ten years: *Provided, however,* That the Secretary
12 may award a contract for a term not to exceed twenty
13 years if the Secretary determines that a longer term is
14 a necessary component of the overall contract in order to
15 reduce the costs to the United States of acquiring
16 possessory interests or to carry out the policies of this title
17 and other laws applicable to the National Park System.

18 (b) **TEMPORARY CONTRACT.**—A temporary conces-
19 sion contract awarded on a non-competitive basis pursuant
20 to section 405(b) of this title shall be for a term not to
21 exceed two years.

22 **SEC. 409. TRANSFER OF CONTRACT.**

23 (a) **IN GENERAL.**—(1) No concession contract may
24 be transferred, assigned, sold, or otherwise conveyed by

1 a concessioner without prior written notification to, and
2 approval of the Secretary.

3 (2) The Secretary shall not unreasonably withhold
4 approval of a transfer, assignment, sale, or conveyance of
5 a concession contract, but shall not approve the transfer
6 of a concession contract to any individual, corporation or
7 other entity if, among other matters, the Secretary deter-
8 mines that—

9 (A) such individual, corporation or entity is, or
10 is likely to be, unable to completely satisfy all of the
11 requirements, terms, and conditions of the contract;

12 (B) such transfer, assignment, sale or convey-
13 ance is not consistent with the objectives of protect-
14 ing and preserving park resources, and of providing
15 necessary and appropriate facilities or services to the
16 public at reasonable rates;

17 (C) such transfer, assignment, sale, or convey-
18 ance relates to a concession contract which does not
19 provide to the United States consideration commensurate
20 with the probable value of the privileges
21 granted by the contract; or

22 (D) the terms of the transfer, assignment, sale,
23 or conveyance directly or indirectly attribute a sig-
24 nificant value to intangible assets or otherwise may
25 so reduce the opportunity for a reasonable profit

1 over the remaining term of the contract that the
2 United States would be required to make substantial
3 additional expenditures in order to avoid interrup-
4 tion of services to park visitors.

5 (b) CONGRESSIONAL NOTIFICATION.—Within thirty
6 days after receiving a request to approve a transfer, as-
7 signment, sale, or other conveyance of a concession con-
8 tract with anticipated annual gross receipts in excess of
9 \$1,000,000 (indexed to 1993 constant dollars) or a dura-
10 tion in excess of 10 years, the Secretary shall notify the
11 Committee on Energy and Natural Resources of the Unit-
12 ed States Senate and the Committee on Resources of the
13 United States House of Representatives of such proposal.
14 Approval of such proposal, if granted by the Secretary,
15 shall not take effect until sixty days after the date of noti-
16 fication of both Committees.

17 **SEC. 410. PROTECTION OF CONCESSIONER INVESTMENT.**

18 (a) EXISTING STRUCTURES.—(1) A concessioner
19 who, pursuant to a concession contract, before the date
20 of enactment of this title acquired or constructed, or as
21 of such date was required by such a contract to commence
22 acquisition or construction, of any structure, fixture, or
23 improvement upon land owned by the United States within
24 a park, shall have a possessory interest therein, to the ex-
25 tent provided by such contract, the value of such

1 possessory interest to be determined for all purposes on
2 the basis of applicable laws and contracts in effect on the
3 day before such date of enactment.

4 (2) The provisions of this subsection shall not apply
5 to a concessioner whose contract in effect on the date of
6 enactment of this title does not include recognition of a
7 possessory interest.

8 (3)(A)(i) Except as provided in subparagraph (B),
9 with respect to a concession contract entered into on or
10 after the date of enactment of this title, the provisions
11 of subsection (b) shall apply to any existing structure, fix-
12 ture, or improvement as defined in paragraph (1), except
13 that the value of the possessory interest as of the termi-
14 nation date of the first contract expiring after the date
15 of enactment of this title shall be used as the basis for
16 depreciation, in lieu of the actual original cost of such
17 structure, fixture, or improvement.

18 (ii) Notwithstanding Generally Accepted Accounting
19 Principles, a concessioner with a possessory interest as
20 provided in subsection (a) may, at the termination date
21 of the first contract expiring after the date of enactment
22 of this Act, re-estimate the useful life of the applicable
23 structure, fixture, or improvement, consistent with sub-
24 section (b): *Provided*, That the estimated useful life of

1 such structure, fixture, or improvement shall not there-
2 after be reestablished or revalued.

3 (B) If the Secretary determines during the competi-
4 tive selection process that all proposals submitted either
5 fail to meet the minimum requirements or are rejected (as
6 provided in section 405), the Secretary may, solely with
7 respect to a structure, fixture, or improvement covered
8 under this paragraph, suspend the depreciation provisions
9 of subsection (b)(1) for the duration of the contract: *Pro-*
10 *vided*, That the Secretary may suspend such depreciation
11 provisions only if the Secretary determines that the estab-
12 lishment of other new minimum contract requirements is
13 not likely to result in the submission of satisfactory pro-
14 posals, and that the suspension of the depreciation provi-
15 sions is likely to result in the submission of satisfactory
16 proposals.

17 (b) NEW STRUCTURES.—(1) On or after the date of
18 enactment of this title, a concessioner who constructs or
19 acquires a new, additional, or replacement structure, fix-
20 ture, or improvement upon land owned by the United
21 States within a park, pursuant to a concession contract,
22 shall have an interest in such structure, fixture, or im-
23 provement equivalent to the actual original cost of acquir-
24 ing or constructing such structure, fixture, or improve-
25 ment, less straight line depreciation over the estimated

1 useful life of the asset according to Generally Accepted
2 Accounting Principles: *Provided*, That in no event shall
3 the estimated useful life of such asset exceed the deprecia-
4 tion period used for such asset for Federal income tax pur-
5 poses.

6 (2) In the event that the contract expires or is termi-
7 nated prior to the estimated useful life of an asset de-
8 scribed in paragraph (1), the concessioner shall be entitled
9 to receive from the United States or the successor conces-
10 sioner payment equal to the value of the concessioner's
11 interest in such structure, fixture, or improvement. A suc-
12 cessor concessioner may not revalue the interest in such
13 structure, fixture, or improvement, the method of depre-
14 ciation, or the estimated useful life of the asset.

15 (3) Title to any such structure, fixture, or improve-
16 ment shall be vested in the United States.

17 (c) INSURANCE, MAINTENANCE AND REPAIR.—Noth-
18 ing in this section shall affect the obligation of a conces-
19 sioner to insure, maintain, and repair any structure, fix-
20 ture, or improvement assigned to such concessioner and
21 to insure that such structure, fixture, or improvement
22 fully complies with applicable safety and health laws and
23 regulations.

1 **SEC. 411. RATES AND CHARGES TO PUBLIC.**

2 The reasonableness of a concessioner's rates and
3 charges to the public shall, unless otherwise provided in
4 the prospectus and contract, be judged primarily by com-
5 parison with those rates and charges for facilities and
6 services of comparable character charged by parties in rea-
7 sonable proximity to the relevant park and operating
8 under similar conditions, with due consideration for length
9 of season, seasonal variance, average percentage of occu-
10 pancy, accessibility, availability and costs of labor and ma-
11 terials, type of patronage, and other factors deemed sig-
12 nificant by the Secretary.

13 **SEC. 412. CONCESSIONER PERFORMANCE EVALUATION.**

14 (a) REGULATIONS.—Within one hundred and eighty
15 days after the date of enactment of this title, the Sec-
16 retary, after an appropriate period for public comment,
17 shall publish regulations establishing standards and cri-
18 teria for evaluating the performance of concessioners oper-
19 ating within parks.

20 (b) PERIODIC EVALUATION.—(1) The Secretary shall
21 periodically conduct an evaluation of each concessioner op-
22 erating under a concession contract pursuant to this title
23 to determine whether such concessioner has performed
24 satisfactorily. In evaluating a concessioner's performance,
25 the Secretary shall seek and consider applicable reports
26 and comments from appropriate Federal, State, and local

1 regulatory agencies, and shall seek and consider the views
2 of park visitors and concession customers. If the Sec-
3 retary's performance evaluation results in an unsatisfac-
4 tory rating of the concessioner's overall operation, the Sec-
5 retary shall so notify the concessioner in writing, and shall
6 provide the concessioner with a list of the minimum re-
7 quirements necessary for the operation to be rated satis-
8 factory.

9 (2) The Secretary may terminate a concession con-
10 tract if the concessioner fails to meet the minimum oper-
11 ational requirements identified by the Secretary within the
12 time limitations established by the Secretary at the time
13 notice of the unsatisfactory rating is provided to the con-
14 cessioner.

15 (3) If the Secretary terminates a concession contract
16 pursuant to this section, the Secretary shall solicit propos-
17 als for a new contract consistent with the provisions of
18 this title.

19 (c) CONGRESSIONAL NOTIFICATION.—The Secretary
20 shall notify the Committee on Energy and Natural Re-
21 sources of the United States Senate and the Committee
22 on Resources of the United States House of Representa-
23 tives of each unsatisfactory overall annual rating and of
24 each concession contract terminated pursuant to this sec-
25 tion.

1 **SEC. 413. RECORDKEEPING REQUIREMENTS.**

2 (a) IN GENERAL.—Each concessioner shall keep such
3 records as the Secretary may prescribe to enable the Sec-
4 retary to determine that all terms of the concessioner's
5 contract have been and are being faithfully performed, and
6 the Secretary, the Inspector General of the Department
7 of the Interior, or any of the Secretary's duly authorized
8 representatives shall, for the purpose of audit and exam-
9 ination, have access to such records and to other books,
10 documents and papers of the concessioner pertinent to the
11 contract and all the terms and conditions thereof as the
12 Secretary and the Inspector General deem necessary.

13 (b) GENERAL ACCOUNTING OFFICE REVIEW.—The
14 Comptroller General of the United States or any of his
15 or her duly authorized representatives shall, until the expi-
16 ration of five calendar years after the close of the business
17 year for each concessioner, have access to and the right
18 to examine any pertinent books, documents, papers, and
19 records of the concessioner related to the contracts or con-
20 tracts involved, including those related to any Park Im-
21 provement Funds established pursuant to section 407(b).

22 **SEC. 414. EXEMPTION FROM CERTAIN LEASE REQUIRE-**
23 **MENTS.**

24 The provisions of section 321 of the Act of June 30,
25 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leas-
26 ing of buildings and properties of the United States, shall

1 not apply to contracts awarded by the Secretary pursuant
2 to this title.

3 **SEC. 415. NO EFFECT ON ANILCA PROVISIONS.**

4 Nothing in this title shall be construed to amend, su-
5 perse, or otherwise affect any provision of the Alaska
6 National Interest Lands Conservation Act (16 U.S.C.
7 3101 et seq.).

8 **SEC. 416. IMPLEMENTATION.**

9 (a) **AUDIT REQUIREMENT.**—Beginning with fiscal
10 year 1997, the Inspector General of the Department of
11 the Interior shall conduct a biennial audit of the Sec-
12 retary's implementation of this title and the award and
13 management of concession contracts and authorizations
14 described in section 404(b).

15 (b) **BIENNIAL REPORTS.**—Beginning on June 1,
16 1997, and biannually thereafter the Secretary and the In-
17 spector General of the Department of the Interior shall
18 submit a report to the Committee on Energy and Natural
19 Resources of the United States Senate and the Committee
20 on Resources of the United States House of Representa-
21 tives on the implementation of this title and the effect of
22 such implementation on facilities operated and services
23 provided pursuant to concession contracts.

24 (c) **INFORMATION FROM SECRETARY.**—In each re-
25 port required by this section, the Secretary shall—

1 (1) identify any concession contracts which have
2 been renewed, renegotiated, terminated, or trans-
3 ferred during the 2 years prior to the submission of
4 the report and identify any significant changes in
5 the terms of the new contract;

6 (2) state the amount of franchise fees, the rates
7 which would be charged for services, and the level of
8 other services required to be provided by the conces-
9 sioner in comparison to that required in any pre-
10 vious concession contract for the same facilities or
11 services at the same park;

12 (3) assess the degree to which facilities are
13 being maintained, using the condition of such facili-
14 ties on the date of enactment of this Act as a base-
15 line;

16 (4) indicate whether competition has been in-
17 creased or decreased with respect to the awarding of
18 concession contracts;

19 (5) set forth the total amount of revenues re-
20 ceived and financial obligations incurred or reduced
21 by the Federal Government as a result of enactment
22 of this Act for the reporting period and in compari-
23 son with previous reporting periods and the baseline
24 year of 1993, including the costs, if any, associated
25 with the acquisition of possessory interests; and

1 (6) include information concerning any park
2 improvement funds established pursuant to section
3 407(b) of this title, including—

4 (A) the total amount of funds deposited
5 into and expended from each such fund during
6 the preceding 2-year period; and

7 (B) the purposes for which expenditures
8 from such funds during such period were used.

9 (d) INFORMATION FROM INSPECTOR GENERAL.—In
10 each report required by this section, the Inspector General
11 of the Department of the Interior shall include informa-
12 tion as to the results of the audit required by subsection
13 (a), including—

14 (1) the status of the Secretary's implementation
15 of this title;

16 (2) the extent to which such implementation
17 has furthered the policies of this title, as set forth
18 in section 401, and has led to an increase or de-
19 crease in competition for concession contracts;

20 (3) the adequacy of recordkeeping and other re-
21 quirements imposed on establishment and use of
22 park improvement funds established pursuant to sec-
23 tion 407(b); and

1 (4) any recommendations the Inspector General
2 may find appropriate in order to further the pur-
3 poses of this title and other laws applicable to the
4 National Park System or to assure that park im-
5 provement funds established pursuant to section
6 407(b) are maintained and expenditures therefrom
7 are used in accordance with this title and sound
8 business practices.

9 **SEC. 417. AUTHORIZATION OF APPROPRIATIONS.**

10 There is authorized to be appropriated such sums as
11 may be necessary to carry out this title.

○