F2419(2410) September 23, 1999

Memorandum

To: Regional Directors

From: Associate Director, Park Operations and Education (Signed) Maureen Finnerty

Subject: Guidelines for Use of Concessioner 80 Percent Franchise Fees

The purpose of this memorandum is to provide criteria and procedures for the use of 80 percent concessioner franchise fees as provided for in Public Law 105-391.

A. ESTABLISHMENT OF SPECIAL ACCOUNTS

Effective as of October 1, 1998, Title IV (National Park Service Concessions Management) of Public Law 105-391 (November 13, 1998) provides for use of concessioner franchise fees by the National Park Service (NPS). Section 407 states that:

> "All franchise fees (and other monetary consideration) paid to the United States pursuant to concessions contracts shall be deposited into a special account established in the Treasury of the United States.
>
> Twenty percent of the funds deposited in the special account shall be available for expenditure by the Secretary, without further appropriation, to support activities throughout the National Park System regardless of the unit of the National Park System in which the funds were collected. The funds deposited into the special account shall remain available until expended."

A separate memorandum will be prepared detailing the criteria for use of concessioner 20 percent franchise fee funds.

In addition, the law requires that within the special account, 80 Percent Franchise Fee sub-accounts are to be established for each unit of the National Park System. It further provides that:

> "Each sub-account shall be credited with 80 percent of the franchise fees (and other monetary considerations) collected at a single unit of the National Park System under concessions contracts. The funds credited to the subaccount for a unit of the National Park System shall be available for expenditure by the Secretary, without further appropriation. The funds credited to a sub-account shall remain available until expended."

There are today some 130 parks with concession operations, not all of which pay a franchise fee. Fees sent to the Treasury will be available for use, retroactive to October 1, 1998. The 80 percent sub-accounts will initially start with an aggregate of approximately $14 million annually. This annual amount can be expected to grow as new contracts are authorized with higher returns to the government and as capital improvement accounts are phased out and replaced with franchise fees.

B. CRITERIA FOR USE OF CONCESSION 80 PERCENT FRANCHISE FEE FUNDS

The following considerations and criteria will provide guidelines for the initial uses of these funds and the order of priority for use of 80 Percent Franchise Fees (80%FF) funds shall be as follows:

1. If concession related needs exist, they shall be addressed first, taking into consideration the following discussion on the availability and use of various funding sources.

Concession related needs include high priority concession facility improvements, including purchases of major equipment, rehabilitation, and related infrastructure needs. Funds may be used for contracting for commercial use studies and plans, that include determinations of "necessary and appropriate" for concession facilities and services, facility and condition surveys, the management of concessioner construction projects, construction supervision, and the compensation requested to extinguish a concessioners interest in a facility (i.e., possessory interest).

In parks with more than one concessioner, franchise fees can be pooled, and returns from one concessioner can be used to meet other needs. However, to the extent possible, a priority should be placed on meeting the needs of a concessioner with the fees generated by that concessioner.

Within the visitor service activity, concession improvement and infrastructure needs have traditionally been funded through concessioner funds, appropriations, or concessioner capital improvement accounts. However, the availability of appropriated funds is very limited, and no new capital improvement accounts within concession contracts will be established. Future **new** improvement needs must be funded with 80%FF funds or by a concessioner as a contract requirement which will result in leasehold surrender interest (LSI) or possessory interest in concessioner-constructed improvements. When a concessioner is required to construct a new concessioner improvement, new or increased possessory interest or leasehold surrender interest is likely to result. In these instances, the NPS will need to determine if it is in the Government's best interest to initiate the improvement by the concessioner, with resulting LSI, or to fund it with 80%FF funds from the park sub-account to eliminate the establishment of additional LSI.

Under no circumstances may monies from an 80%FF sub-account be utilized to maintain, repair, or improve any property in which a concessioner has a possessory interest or a leasehold surrender interest under the terms of its concession contract. However, if a concessioner is willing to waive all LSI or possessory interest in a complete property (e.g., the entirety of a hotel structure), it may be appropriate to use 80%FF sub-account funds to improve the property. This use of 80%FF funds, however, may not be undertaken without express written approval of the Director in light of the legal complexities that are involved. Moreover, concession fees are not to be used for park or maintenance as these costs are the responsibility of the park, or for concession operations or maintenance, as these costs are the responsibility of the concessioner. It is expected that in the future a program will be developed to provide assistance to parks in assessing the condition of their concession facility inventory. It is also expected that concession facilities will be included along with other facilities in the park facility inventory.

2. The second priority shall be environmental and energy efficiency projects involving facilities or visitor services.

Projects could include environmental compliance (such as water and waste water treatment), energy conservation (such as energy efficiency and renewable technologies), accessibility, sustainable design and construction and seismic (relating to structures).

3. Remaining funds should be used to (a) enhance other visitor services, and (b), to fund high-priority resource management programs.

The high-priority resource management programs should be non-recurring projects identified in an approved Resource Management Plan. Projects should result in a demonstration of: (1) resource improvement (e.g. stabilization and rehabilitation of cultural landscapes) or (2) resource understanding (e.g., through non-recurring inventory monitoring evaluations and or resource condition/threat assessments).

No seasonal (and temporary FY 1999) salaries may be charged in FY 1999 to the 80%FF account. A determination on using funds for seasonal salaries (and, if so used, under what guidelines) will be made in FY 2000, following an analysis of both concession program staffing (as required by the new law) and the optimum use of funds vis-à-vis meeting concession and other development needs.

C. ACCOUNTING PROCEDURES

In the past, PWE 700, Concession Franchise Fees – gross receipts, and PWE 701 - Concession Franchise Fees/Building Use Fees, have been used to deposit receipts in the Treasury. Effective October 1, 1999, **ONLY PWE 700** will be used for future deposits. It will be used for the deposit of **ALL** Concession Franchise Fees regardless of type or source. Under the new legislation, all deposits (retroactive to last October 1) will go into the new Treasury account established for the National Park Service. The Service will retain all receipts in this account. The FFS account number will be FFS 99.

Treasury clearance has been received and two new accounts have been established in FFS. One is for the receipt of all franchise fee deposits and the other is for the expenditure of those deposits. As described earlier, there will be an 80/20 split of the income. Accordingly, the new expenditure account will have two activities. The "20%" Activity will be 9910 and will use PWE 702 for all cost accounts in that activity. The "80%" Activity will be 9920 and will use PWE 703 for all cost accounts in that activity.

ALL costs in this fund must be recorded using project level accounts which includes funds used for contracted services. The total of all projects at a park with a target funding source (80%FF) must not exceed your total estimate of available franchise fee revenue for 1999, 2000, and 2001. It may be less than that amount should you plan to carry over funds.

D. BUDGET AND ACCOUNTABILITY FOR 80 PERCENT FRANCHISE FEE FUNDS

1. All projects, including revenue estimates and project lists for each (improvements, contracts, etc.) must be submitted to the regional director for final approval by each November 1, beginning with November 1, 1999. The list will be generated from the Project Management Information System (PMIS) using the appropriate fund codes.

   The regional director will approve each project as appropriate to the source of funds, and within the priorities set forth above. Review and approval of projects under $500,000 will be completed at the regional level. Projects over $500,000 will be forwarded from the regional director to the Concession Program Manager and Associate Director, Park Operations and Education for appropriate review and approval. The review and approval process will include the Assistant Secretary for Fish and Wildlife and Parks, the Director and the Development Advisory Board.

2. Unlike appropriated funds, the amount of funding available will vary with concession contract provisions and the result of annual operations. Estimates of revenue will, therefore, be important to the management of this program.

   Each park with concession operations shall provide to the regional director a list of concessioners with estimated franchise fees for fiscal years 1999, 2000 and 2001 as described in #3 (below). These estimates will be revised and a new third year added to the 3-year list by each park involved. Considering the large amount of concession contracting that will occur in the next few years, it is recognized that these early estimates, in many instances, will be extensively revised. These estimates will be the basis for project lists and will be used to provide information to the Office of Policy Management and Budget.

3. Along with the revenue estimates, a 3-year list of proposed expenditures shall also be provided. Each park with 80%FF funds shall provide expenditure estimates for one or more of the following categories, and/or list funds to be carried over to subsequent years. It is assumed that, most or all funds in FY 1999 will be carried over to FY 2000. Initial estimates for each project should be prepared even though they may be rough estimates. The expenditure categories are:

   - Concession related needs
   - Environmental and energy efficiency projects
   - Enhancement of other visitor services or funding of high priority resource management programs

   The list should include a title, cost estimate and a brief description (not to exceed 3 lines) for each improvement, environmental, rehabilitation, and infrastructure project. Project costs must be expressed in gross amounts. The total cost of your project must include costs for planning, design, compliance, construction, contingencies, and project supervision. The National Academy of Public Administration percentages will apply to your net construction estimate and should not exceed 5 percent of net for pre-design and site analysis, 2 percent of net for supplemental services (i.e., surveys, value analysis, and Class A cost estimates), 10 percent of net for planning, 8 percent of net for construction management and 10 percent of net for contingency.

4. Project lists shall be prioritized and distributed against income estimates made for the coming 3 years. Specifically identify sums to be carried over to future years for anticipated or yet-to-be-determined uses.

5. All projects (improvements, contracts, etc.) to be funded from 80%FF funds must be identified in the PMIS file. All phases of a project must be described and submitted as a single PMIS entry. Projects should be identified in the project documentation utilizing the project emphasis data field. List improvement projects by fiscal year and funds to be carried over to later years. Totals by year must not exceed revenue projections. It should be noted, particularly in light of anticipated extensive concession contracting during the next few years, that there is flexibility in the process and project lists can be revised.

6. By December 1 of each year, the regional office will provide to the Associate Director, Park Operations and Education a report by park and concessioner of revenue generated, and expenditures on approved projects for the previous fiscal year including the category (Refer to D, #3). The amount of revenue generated and carried over to the next fiscal year will also be shown.

7. Each park may access its sub-account as needed to fund approved projects.

This is a new program and in order to assure proper management and accountability, we will, on an ongoing basis, review procedures for utilizing the 80%FF in order to ensure that this is an efficient and effective program.

In order to expedite the above submittals, this memorandum is being sent electronically to superintendents with concession operations.

cc: Associate Director, Park Operations and Education
Associate Regional Directors, Park Operations and Education
Regional Chiefs/Team Leaders, Concessions
Manager, Concession Program Center
Comptroller, Budget and Finance Group, WASO
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