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Campground Concession Desk Guide

Concessionaire Desk Guide

Table of Contents

| | |
|---|------------|
| Chapter 1: Introduction | 1-1 |
| Preface | 1-1 |
| Acknowledgments | 1-1 |
| Program Objective | 1-1 |
| Purpose of the Desk Guide | 1-1 |
| Background | 1-2 |
| Benefits of Campground Concessions | 1-2 |
| Authority for Campground Concessions | 1-3 |
| Chapter 2: Concession Feasibility | 2-1 |
| Programmatic Feasibility | 2-1 |
| Conversion to Dispersed Use | 2-1 |
| FS Management | 2-1 |
| Recreation Fee Demonstration Program | 2-1 |
| G-T Concessions | 2-2 |
| Private/Public Ventures (PPV) | 2-2 |
| Term Permit Program | 2-2 |
| Site-Specific Feasibility | 2-3 |
| Local Site and Facilities | 2-3 |
| Condition of the Facility | 2-3 |
| Review of Concession in Context of Recreation and Infrastructure Maintenance Program | 2-3 |
| Site History | 2-3 |
| Scope of the Concession | 2-3 |
| Agency Management | 2-3 |
| Budgetary Constraints | 2-3 |
| Other Considerations | 2-4 |
| Economic Viability | 2-4 |
| Customer Service Needs | 2-4 |
| Effects on the Local Community | 2-4 |
| NEPA Documentation | 2-4 |
| Appendix 2A: Feasibility Assessment | 2-5 |
| Appendix 2B: Economic Feasibility of Conversion to a Concession | 2-9 |
| Appendix 2C: Cost/Benefit Analysis for Conversion to a Concession | 2-11 |
| Appendix 2D: Income/Expense Worksheet for Determining Economic Viability of a Concession | 2-13 |
| Chapter 3: The Prospectus | 3-1 |
| Considerations for Issuing a Prospectus | 3-1 |
| Developing a List of Potential Applicants | 3-1 |
| Customer Service | 3-1 |
| Application Evaluation Plan | 3-1 |
| The Evaluation Team | 3-2 |
| The Evaluation Criteria | 3-2 |
| Relative Importance of Evaluation Criteria | 3-5 |
| Time Frame for Preparing a Prospectus | 3-6 |
| Development of a Prospectus | 3-7 |

| | |
|--|------|
| Cover Sheet | 3-7 |
| Table of Contents | 3-7 |
| Introduction | 3-7 |
| Site Descriptions and Income-and-Expense Data | 3-8 |
| Area Description | 3-8 |
| FS Site Descriptions | 3-8 |
| Income-and-Expense Data | 3-9 |
| The Opportunity | 3-9 |
| FS Programs and Policy | 3-9 |
| Special-Use Permit to Be Issued | 3-11 |
| G-T Fee Offset Agreement | 3-11 |
| Standard Operating Plan Provisions | 3-12 |
| Proposed Operating Plan Provisions | 3-14 |
| Operating Season | 3-15 |
| Staffing | 3-15 |
| Required Services | 3-15 |
| Optional Services | 3-16 |
| Concessionaire Income and Expenses | 3-17 |
| Other Required Submissions | 3-20 |
| Financial Documents | 3-20 |
| Miscellaneous Submissions | 3-21 |
| Appendices and Other Documents | 3-21 |
| Mandatory Appendices | 3-21 |
| Optional Appendices | 3-21 |
| Documents Available upon Request | 3-21 |
| Advance Public Notice | 3-22 |
| Notice of the Opportunity | 3-33 |
| Target Audience | 3-22 |
| Appendix 3A: Sources for Potential Applicants | 3-23 |
| Appendix 3B: FS 6500-25, Request for Verification. | 3-24 |
| Appendix 3C: Time Frame for Issuance of a Prospectus | 3-26 |
| Appendix 3D: Prospectus Outline | 3-28 |
| Appendix 3E: Inventory of Government-Furnished Property | 3-33 |
| Appendix 3F: FS 2700-4e, 'Special-Use Permit for Campground and Related Granger-Thye Concessions. | 3-35 |
| Appendix 3G: Sample List of Holder-Furnished Property | 3-54 |
| Appendix 3H: Sample Holder Maintenance-and-Reconditioning . . Plan | 3-55 |
| Appendix 3I: FS 6500-24, Financial Statement | 3-57 |
| Appendix 3J: Sample Notification of a Concession Opportunity | 3-62 |

Chapter 4: Selecting a Concessionaire 4-1

| | |
|---|-----|
| Evaluation Method | 4-1 |
| Fixed Weights | 4-1 |
| Non-Fixed Weights | 4-1 |
| Tradeoff Analysis | 4-1 |
| Evaluation of Applications | 4-2 |
| Selection of an Applicant | 4-3 |
| Establishing a Competitive Range | 4-3 |
| Written or Oral Discussions | 4-3 |
| Issuance of a Permit | 4-4 |
| Follow-Up | 4-4 |
| FOIA Requests | 4-4 |
| Appeals | 4-5 |
| Prerequisites to Issuance of a Permit | 4-5 |

| | |
|---|------|
| Appendix 4A: Sample Rating Sheet | 4-6 |
| Appendix 4B: Sample Notification Letter: Selected Applicant | 4-10 |
| Appendix 4C: Sample Notification Letter: Non-Selected Applicant | 4-12 |
| Appendix 4D: Determination of Financial Ability | 4-13 |

Chapter 5: Permit Fees and G-T Fee Offset 5-1

| | |
|---|-----|
| Establishing the Permit Fee | 5-1 |
| Establishing a Minimum Fee Based on Appraisal | 5-1 |
| Fee Component for the Use of Government Land | 5-2 |
| Fee Component for the Use of Government Improvements | 5-2 |
| Combined Fee | 5-2 |
| Establishing a Minimum Fee Based on Gross Receipts | 5-2 |
| Establishing a Minimum Fee Based on a Schedule | 5-2 |
| G-T Fee Offset | 5-2 |
| Alteration of Government Improvements during M&R | 5-3 |
| G-T Fee Offset Agreement and Certification | 5-3 |
| Long-Term Government M&R | 54 |
| 1. Modified Fee Schedule for Accelerated G-T Fee Offset Work | 54 |
| 2. FS Performs Work under Collection Agreement | 5-4 |
| Offset for Concessions Involving Multiple Sites | 5-4 |
| Collection Agreements for G-T Fee Offset Projects | 5-4 |
| Permit Fee Payments | 5-5 |

| | |
|--|------|
| Appendix 5A: Sample Government M&R Projects | 5-6 |
| Appendix 5B: Sample Annual Granger-Thye Gee Offset Agreement | 5-8 |
| Appendix 5C: Granger-Thye Fee Offset Certification Form | 5-10 |

Chapter 6: Technical Issues 6-1

| | |
|--|-----|
| Insurance 6-1 | |
| Master Policy Review | 6-1 |
| Liability Insurance | 6-2 |
| Casualty Insurance | 6-2 |
| Combined-Single-Limit Policies | 6-3 |
| Insurance for Multiple Permits | 6-3 |
| Insurance for Permits Issued to States | 6-3 |
| Insurance for Permits Issued to Federal Agencies | 6-3 |
| Administering Insurance Coverage | 6-3 |
| Bonding | 6-4 |
| Type of Bond | 6-4 |
| Forms of Bonding | 6-5 |
| Collection Agreements | 6-5 |

| | |
|---|-----|
| Appendix 6A: Performance Bond for Special-Use Permits | 6-7 |
| Appendix 6B: Sample Collection Agreement for G-T Fee Offset Work | 6-8 |

Chapter 7: Permit Administration 7-1

| | |
|---------------------------------|-----|
| Training 7-1 | |
| Orientation | 7-1 |
| Permit and AOP Review | 7-1 |

Performance Evaluations 7-1

Adverse Actions 7-2

 Revocation and Suspension 7-2

 Termination 7-3

Claims against the Holder 7-3

Health and Safety Inspections 7-3

Appendix 7A: Standard Performance Evaluation Form for
Campground and Related Granger-Thye Concessions 7-4

Appendix 7B: Enforcement Action Checklist 7-8

Appendix 7C: Sample Noncompliance Letter 7-9

Chapter 8: Operations Library 8-1

Appendix 8A: Use and Revenue Data 8-2

Appendix 8B: National Recreation Reservation Service 8-4

Appendix 8C: Interpretive Services at Concession Campgrounds 8-5

Appendix 8D: Concessionaire Compliance with Labor Law 8-8

Appendix 8E: Law Enforcement at Concession Campgrounds 8-11

Appendix 8F: Customer Service Comment Cards 8-16

Chapter 1

Introduction

Preface

This *Campground Concession Desk Guide* is a compilation of agency regulations and policy. It is not new policy, but rather guidance on application of existing policy in a specific context. The desk guide will be periodically reviewed and modified as new regulations or policy are promulgated.

An electronic copy of the desk guide is available. For more information, please contact the Washington Office Recreation Special Uses staff at (202) 205-1706.

Acknowledgements

This desk guide would not have been possible without the contributions of many talented people in the Washington Office, regional offices, field offices, and the Office of the General Counsel, who gave their most limited resource: time.

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Program Objective

The objective of the agency's concession program is to offer quality recreation services to the public by providing a business opportunity on National Forest System lands. To meet this objective, the agency must establish an effective business relationship with concessionaires.

Purpose of the Desk Guide

The concession program is growing. Two decades ago, Forest Service (FS) personnel operated and maintained the vast majority of recreation facilities on National Forest System lands. Today, concessionaires operate the majority of campgrounds where use fees are charged. Concession management will continue to be a vital means of accommodating visitor demands into the twenty-first century.

With continued budget reductions, the number and complexity of sites managed as concessions have grown. Additionally, some concessionaires have evolved from local businesses to national businesses. Both factors contribute to complexity in the concession program. This desk guide is intended to ensure proficiency and consistency in issuing and administering special-use permits for concessions at Government-owned recreational facilities, without sacrificing the flexibility to manage individual situations.

In addition to following the desk guide, understanding each other's needs will help forge an effective

business relationship between the FS and its concessionaires. Some of these needs may include the types and hours of services offered, consistent administration, clear understanding of performance criteria, an appreciation of fee offset priorities, understanding each other's procedures, and the difference between Government management and concessionaire management, which involves operation of a business. Make this guide available to the permit holder. Use it together to enhance mutual understanding in connection with administration and operation of the concession.

This guide:

- ☐ Applies to concessions involving strictly Government-owned facilities authorized by a special-use permit issued under Section 7 of the Granger-Thye (G-T) Act, 16 U.S.C. 580d. Since most of these facilities are campgrounds, this document is entitled "Campground Concession Desk Guide." However, much of the information found in the desk guide can be used for other related G-T concessions.
- ☐ Provides guidance on establishing and administering concession operations, including selection of applicants and proper fee calculation and offset.
- ☐ Ensures consistency in concession management by providing standard direction and standard tools, including a standard permit.
- ☐ Emphasizes enhancement of visitor services.

Where there is management of public and private improvements on National Forest System lands, refer to the *Private/Public Ventures Desk Guide*. Concessions involving strictly privately owned improvements are covered in FSM 2340 and 2700.

Background

The FS is constantly looking for innovative ways to accomplish the concession program objective explained above. An entrepreneurial approach is needed to manage FS facilities and reduce costs to the Federal Government.

As appropriated dollars and the Federal workforce shrink, local managers are relying more on the private sector to provide recreation opportunities to the public on the National Forests. Thus, the agency's ability to offer quality recreation services depends on a vibrant concession program.

Operating a concession program is a different way of doing business. Rather than supervising a maintenance crew, the FS administers a special-use permit. Operating a concession program therefore requires good permit administration. While concession operation of campgrounds may improve services, it also requires users to pay the true cost for those services.

A concession program gives the managing unit different options for spending allocated funds. Instead of spending funds on collecting garbage, cleaning toilets, and sanding picnic tables, the manager disburses funds for permit administration and more significant maintenance.

This guide results from years of good work by many Forests and Ranger Districts. Samples from around the nation have been used to develop the standard permit. Examples of other tools from around the country have also been included. The Washington Office and the Office of the General Counsel (OGC) must review any changes to standard forms.

Benefits of Campground Concessions

Concessionaire management of campgrounds offers important benefits:

- ☐ The ability to continue to provide recreation facilities and services in the face of reduced Federal appropriations.
- ☐ The enhanced ability to maintain and recondition Federal facilities through the G-T fee offset.
- ☐ The potential for improved public service, in terms of both quality and quantity.
- ☐ The potential for more staff on site.

Authority for Campground Concessions

Section 7 of the G-T Act is the authority for issuing campground concession permits. The G-T Act authorizes the FS to issue permits to individuals or entities for the use and occupancy of Government-owned structures and their associated lands. All or part of the permit fee may be offset by the cost of maintenance and reconditioning (M&R) paid by the holder of the Government-owned structures and their associated land covered by the permit. Chapter 5 addresses calculation of the G-T permit fee and what type of M&R qualifies for offset under applicable law and agency policy.

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| <h2>Concession Feasibility</h2> |
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This chapter addresses three levels of concession feasibility analysis:

- ☐ Programmatic feasibility.
- ☐ Site-specific feasibility.
- ☐ NEPA documentation.

The need for and extent of concession feasibility analysis will vary. If the feasibility of a concession needs to be determined, it should be done before commencing the process required by the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* If a complete feasibility determination for a G-T concession has been made, skip to the discussion on NEPA documentation in this chapter (page 24).

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| <h3>Programmatic Feasibility</h3> |
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The first step in feasibility analysis is programmatic. At this level of analysis, review management options to determine whether a concession is appropriate, and, if so, which type best provides facilities and services.

The FS has several options for providing recreation facilities and services. Which option is most suitable for a given site should be determined before preparing a prospectus. Economic viability of a site is key in selecting the appropriate program.

Management options range from site closure to concession operation of strictly privately owned improvements. The most common options are G-T concessions and FS management. If a G-T concession is the best management option, consult the Site-Specific Feasibility section of this chapter (page 2-3).

Conversion to Dispersed Use

A site's design may render it infeasible for fee collection. The amount of use fees may be insufficient to cover the cost of collection or the cost of a site's operation and maintenance. If a site cannot be redesigned to be efficient, it may be appropriate to close it and convert it to dispersed use.

FS Management

Sometimes called force account management, under this program operating and maintenance costs are paid from FS-appropriated funds, and use fees are paid directly to the Treasury. On-site staffing may be provided by volunteer hosts or other FS programs, such as the Senior Community Service Employment Program (SCSEP) or Youth Conservation Corps.

A host-managed campground fulfills two goals: it benefits the agency by providing a service to the public, and it benefits the host by offering an opportunity to engage in recreational activities on the National Forests, while contributing to the agency's recreation program. This option may be appropriate for sites that are popular with the public, but do not have the economy of scale to support a concession.

Recreation Fee Demonstration Program

The recreation fee demonstration program is authorized by the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104-134. A provision of the Act authorizes the FS to charge use fees for the use of outdoor-recreation sites, facilities, visitor centers, equipment, or services. Up to 100 projects may be approved under this legislation. The authority for the fee demonstration program expires September 30,

1999. Under the fee demonstration program, revenues collected above previously established levels may be retained by the agency and reinvested in the demonstration sites. Also, 15 percent of current-year collections can be retained to cover fee collection costs.

Per a February 25, 1997, letter from the Chief to Regional Foresters, existing concession sites may not be placed in the recreation fee demonstration program. Modifying permits or not extending permits, as well as reissuing a prospectus for the purpose of incorporating a site in the demonstration program, would conflict with this letter. There may be other ways to involve concessionaires in the fee demonstration program that do not adversely affect the concession program.

Sites that are not currently managed as concessions may be considered for the fee demonstration program.

G-T Concessions

Under this program, permits are issued for the operation and maintenance of existing recreation facilities that are solely Government-owned. The permit is authorized under Section 7 of the G-T Act. This program may be appropriate for sites where expansion is not anticipated, or where the length of season or pattern of use do not generate sufficient revenues to support facility construction.

To be successful, G-T concessions require levels of use and economy of operation sufficient to recover the cost of operation and maintenance. The G-T concession program has been popular with the public, due to improved cleanliness and the presence of on-site staff at FS campgrounds. The program has been popular with the FS because concessionaires can invest use fees directly on site to pay for their staff, daily cleaning, and other services, and because the fee to the Government may be offset by the cost of Government maintenance and reconditioning (M&R) paid for by the holder and performed at the site.

Receipts to states and counties would be reduced to the extent that they would receive only 25 percent

of the permit fee paid to the FS, rather than 25 percent of all use fees collected. The payment to states and counties would be further reduced to the extent the permit fee is offset by qualifying M&R. Reductions in 25 Percent Fund payments may be offset by state and local taxes collected from concessionaires.

Private/Public Ventures (PPV)

PPV provides for joint Government and private ownership of facilities that are managed by the private sector. Existing Government-owned facilities are authorized under the G-T Act, and new privately owned facilities are authorized under the Term Permit Act, 16 U.S.C. 497. Where all Government improvements are sold to the private sector, PPV provides for sole private ownership and management of recreation facilities, authorized by the Term Permit Act.

Existing recreation facilities in need of reconstruction or expansion may be good candidates for PPV. To be viable as a PPV candidate, a site must have sufficient volume of use, length of season, and latent demand for the service or facility offered to recover the capital required for reconstruction or expansion. Permit tenure varies with the amount of capital invested in improvements, and may be authorized for up to 30 years. Chapter 2 of the *PPV Desk Guide* is a useful reference for project evaluation, as it discusses consistency with the applicable Forest land and resource management plan (Forest plan), needs assessment, area analysis, market analysis, and preliminary economic viability.

Term Permit Program

Permits are issued under the Term Permit Act for up to 30 years and for the use of up to 80 acres. In contrast to PPV, improvements in the term permit program are solely privately owned: there is no public/private ownership of facilities, and there are no existing Government facilities that may be sold to the private sector. The length of the permit term varies with the amount invested in capital improvements, and may be for up to 30 years.

Site-Specific Feasibility

This section assumes that a G-T concession has been selected as the preferred management option. In this step, evaluate the factors pertinent to a site-specific action. Use successful concessions as models for determining site-specific feasibility.

The needs assessment outlined in FSM 2341.21 and 2341.23 helps in evaluating a new concession, or one that needs to be changed to improve efficiency or customer service. The success of a concession depends on the following:

- ☐ Local site and facilities.
- ☐ Agency management.
- ☐ Economic viability.
- ☐ Customer service needs.
- ☐ Effects on the local community.

Local Site and Facilities

FSM 2344.33, "Selecting Concession Campground Sites," provides guidance on selecting recreation sites for concessions. Generally, FSM 2344.33 recommends sites with a "Development Scale" of 3, 4, or 5 for concessions and states that all sites with a Development Scale of 4 and 5 should be considered for concessions. Sites with a lower development scale may lack sufficient returns and service levels to support a concession.

Condition of the Facility

Sites should be in satisfactory condition to be considered for concessions, i.e., they should not have health and safety problems or be in a state of disrepair. Is it feasible to maintain the facilities to a satisfactory standard? Does the site need Government M&R? Are projected permit fees sufficient to cover Government M&R for the anticipated permit term? Are capital improvements through FS appropriated funds needed? Would these improvements disrupt a concession?

Review of Concession in Context of Recreation and Infrastructure Maintenance Program

Would infrastructure such as sewer and water systems be shared between the proposed concession and other Government or private facilities? What would be the advantages and disadvantages to each of the parties maintaining the systems?

Site History

Have there been user conflicts at the site? Are design or management changes needed to improve site management? Have there been law enforcement problems at the site? Review the proximity and response of local law enforcement agencies to law enforcement problems.

Scope of the Concession

To simplify administration and create economies of scale, sites within close proximity, including sites across Ranger District and Forest boundaries, should be considered for consolidated operations. If consolidated operations are being considered, the potential consequence of concentrating the market and dampening competition should also be considered. Is it to the agency's advantage to maintain competition by offering smaller packages? Would multiple sites or areas offered as a package be more or less attractive as a concession?

Agency Management

Budgetary Constraints

In recent years, budgets have failed to keep up with the growing operation-and-maintenance workload. The maintenance backlog sometimes devolves into a replacement need; as a result, the agency has been forced to lower its standards for developed sites, to keep them open. A viable concession program can allow the agency to offer high-quality recreation sites and services, despite declining budgets.

Conversion from FS management to concessionaire operation often eases the District's operation-and-maintenance budget because the concessionaire covers the cost of day-to-day operations, and because the fee to the Government may be offset by the cost of eligible Government M&R at the site. However, conversion to a concession requires a shift in staff expertise and funding from operating and maintaining recreation sites to expertise in permit administration. When making this shift, training in permit administration is essential.

Other Considerations

What is the public-service rationale for establishing a concession? What type of control over the concession does the FS need? How much oversight can the FS provide? Are there potential conflicts with existing uses?

Economic Viability

Is there enough revenue to cover the cost of operations? Is the operating season long enough to promote a viable business? How much staff will be required at a particular site (or combination of sites) to provide adequate public service, and are site revenues sufficient to afford the necessary staff? Is there competitive interest in this site as a concession?

What type of company is likely to be interested in operating the site? Consider the recreation market. Are there private-sector recreation providers on private land who are competing for the same customers? How will they be affected? Are there special taxes or required licenses that add cost to the operation? Will local zoning laws or health and safety ordinances affect economic viability?

Customer Service Needs

What are the minimum levels of acceptable customer service at these sites? Are revenues sufficient to provide an acceptable level of service? If not, should changes be made in design, management, or user expectations? What additional services would interest the public, e.g., interpretive programs or additional daytime activities?

Would a concessionaire be able to provide quality programs? Will these services generate enough

revenue to cover expenses? If not, are total site

revenues sufficient to cover these programs? Will a concessionaire be able to provide a higher quality of customer service than the FS?

Effects on the Local Community

Would the community support having a private business operate FS recreation sites in the area? Will users of the site be receptive to a concessionaire? How will county commissioners and other local officials react to a concession? Will revenues to counties be affected? It is important to develop a good communication strategy in advance.

NEPA Documentation

In general, under NEPA's implementing regulations a federal agency conducts an environmental assessment (EA) to determine whether a proposed action may constitute a major federal action significantly affecting the quality of the human environment. If so, an environmental impact statement (EIS) must be prepared for the proposed action.

Additionally, NEPA's implementing regulations allow federal agencies to categorically exclude from documentation in an EA or EIS certain types of proposed actions which do not individually or cumulatively have a significant effect on the human environment. Forest Service NEPA procedures, found in Forest Handbook (FSH) 1909.15, categorically exclude certain types of proposed actions from documentation in an EA or EIS, absent extraordinary circumstances. A list of examples of extraordinary circumstances are set out at FSH 1909.15, section 31.03, paragraph 2.1

Three categories may be applicable to issuance of a permit for existing campground concessions when no or minor changes to the physical environment are proposed:

- ☐ Repair and maintenance of recreation sites and facilities. FSH 1909.15, sec. 31.1b, para 5. A project or case file and decision memo are not required but may be prepared. FSH 1909.15, sec. 31.1b.
- ☐ Approval, modification, or continuation of minor, short-term (one year or less) special uses of National Forest System lands. FSH 1909.15 sec. 31.1b, para. 8 This category may apply, for example, when it is anticipated that after one year or less of authorized use a capital investment project and associated NEPA

Chapter 3

The Prospectus

If a G-T concession is the best management approach, issue a prospectus to select a concessionaire. Competitively advertising recreation concession permits will:

- ☐ Ensure equal opportunity.
- ☐ Enhance customer service.
- ☐ Ensure a fair-market-value return to the Government.

FSM 2712.2 directs the FS to solicit competitive interest for operation of recreation concessions by issuing a prospectus. FSM 2712.2 also provides general direction on development of a prospectus. FSM 2344 addresses issuing a prospectus for concessions involving Government-owned facilities.

This chapter covers:

- ☐ Considerations for issuing a prospectus.
- ☐ Development of a prospectus.
- ☐ Advance public notice.

Chapter 4 will address evaluation of applications and issuance of a permit.

Considerations for Issuing a Prospectus

Developing a List of Potential Applicants

Establish and maintain a mailing list of potential applicants. Retain it electronically, to facilitate

printing of form letters and mailing labels. Many Forests have developed applicant mailing lists for previously advertised opportunities. Check Regional Office contacts for lists of existing concessionaires. Include all people who respond to any announcements about the opportunity, or who have expressed interest in concession opportunities in the past. Other entries on the mailing list may include:

- ☐ Advertisers in camping magazines.
- ☐ American Camping Association.
- ☐ American Recreation Coalition.
- ☐ Campground managers (consult Woodall's *Campground Directory for North America*).
- ☐ Chambers of commerce.
- ☐ County extension service agents.
- ☐ National Association of Recreational Vehicle Parks and Campgrounds (ARVC).
- ☐ National Forest Recreation Association.
- ☐ National Park Hospitality Association.
- ☐ Rural economic development councils (state or regional).
- ☐ Small businesses.

(See Appendix 3A on page 3-23 for the addresses and telephone numbers for these entities.)

Customer Service

Tailor the prospectus to emphasize the customer services desired. Consideration should be given to the changing interests of recreation customers.

Application Evaluation Plan

Develop an application evaluation plan before issuing the prospectus. This plan consists of two parts:

Chapter 3: The Prospectus

Considerations for Issuing a Prospectus: Application Evaluation Plan

1. A description of membership and responsibilities of the evaluation team.
2. A description of evaluation criteria, their relative importance, and procedures for evaluating applications.

With the exception of evaluation procedures, which are covered in Chapter 4, these two parts of the plan are discussed below.

The Evaluation Team

Members of the evaluation team should represent all pertinent disciplines, such as recreation special uses, accounting, economics, business, and contracting, and should be highly qualified. Team members must be free of bias and possess no real or apparent conflict of interest. To maintain objectivity, it may be helpful to include a member from an unrelated discipline, a different agency, or outside the Federal Government. This individual must also be objective and free from actual or apparent conflict of interest.

Team members should be educated in selection procedure and should not have contact with applicants during the evaluation process. Inquiries about the prospectus should not be referred to evaluation team members. Rather, these questions should be handled by a single person who is not connected with the evaluation process, such as the permit administrator.

The Evaluation Criteria

Develop and document evaluation criteria, their relative importance or weights, and scoring methods. Evaluation criteria must be documented in the prospectus. The criteria should allow the FS to assess the applicants' ability to meet the public's needs and provide a basis for determining the merits of competing applications. Once the prospectus is issued, the criteria may not be changed without amending and reissuing the prospectus. This effort may be justified if unanticipated information in the applications reveals a need for modifications to

the criteria to achieve the agency's goals for the concession.

Each evaluation criterion should be clearly described in narrative form. The criteria should not favor any potential applicant. Nor should the criteria on their face exclude an applicant from competition. The same criteria must apply to all applications.

Include verification of financial resources, rather than financial ability, as an evaluation criterion, as discussed below. Require applicants to submit documents necessary to make a financial ability determination (FAD), but use these documents solely to make a FAD per 36 CFR 251.54(e)(3), and not to select a permit holder.

Specify in the prospectus that a FAD will be made only on the selected applicant as a prerequisite to permit issuance, unless that applicant is deemed financially incapable. In that event, refer to Appendix 4D (pages 4–13-14) for appropriate procedures. Appendix 4D discusses the FAD in detail.

The following standard evaluation criteria must be included in every prospectus. They are listed in approximate order of importance.

1. Proposed Operating Plan Provisions.
2. Business Plan and Business Experience.
3. Financial Resources.
4. Fee to the Government.
5. Fees Charged to the Public.

Other criteria may be used. However, they should be used sparingly, as additional criteria increase the complexity of evaluation and the time for an applicant to respond. Additional criteria should help distinguish the applications. Other criteria that may be used include:

6. Willingness to Manage Multiple Sites.
7. Special Services, e.g., Interpretive Services, Security, Use of Specialized Professionals for G-T Fee Offset Work, and Accelerated Schedule for G-T Fee Offset Work.

These evaluation criteria are discussed below.

Chapter 3: The Prospectus

Considerations for issuing a Prospectus: Application Evaluation Plan

1. Proposed Operating Plan Provisions

2. Business Plan and Business Experience

The quality and quantity of required and optional services are assessed under this criterion. Ask applicants to explain how required and optional public services will be delivered. Have applicants demonstrate quality customer service and timely compliance with permit and operating plan requirements. See Development of a Prospectus,. Proposed Operating Plan Provisions, in this chapter for detailed information on this topic.

Business Plan

Require applicants to submit a business plan. For each part of the project, the project business plan must specify whether the applicant will perform the work or meet the requirement via a third party. The applicant must identify any third parties who will be responsible for any of the operational aspects of the concession, and describe their relevant experience.

The plan should estimate the costs of operating the facilities. It should identify all interim and permanent sources of funds.

The plan should include information concerning the business organization and organizational structure required by 36 CFR 251.54(e)(1) and 251.54(e)(2)(ii), such as applicant name and mailing address, designated agent, evidence of incorporation and good standing, and the name and address of each affiliate of the applicant. Applicants that are limited-liability companies should provide the names and interests of the companies' principals.

State that if the applicant is not incorporated in the state where the concession is located, the applicant must submit a license to do business in that state.

Business Experience

Instruct applicants to furnish a detailed description of experience relating to operation of recreation sites, such as campgrounds, beaches, boat ramps, and associated facilities. The description should include experience in private business, public services, or any nonprofit or other related enterprises. For each business venture, have applicants provide:

- ☐ The dates for the business experience.
- ☐ The location of the business.
- ☐ A description of services provided.
- ☐ A description of customers served.
- ☐ The number of employees supervised.
- ☐ The volume of business.

For experience in managing FS or other Government campgrounds and associated facilities, applicants should also provide copies of annual written performance evaluations, or state that an evaluation was not completed for the years referenced.

Require applicants to furnish three business references with names, addresses, and telephone numbers in support of applicable business experience.

3. Financial Resources

Under this criterion, evaluate applicants based on the amount of funding that is readily available to them. Funding can take the form of cash, letter of credit, stocks, or mutual funds. Use completed form FS-6500-25, "Request for Verification," or other verifiable information submitted to assist in making this assessment. Include the form as an appendix to the prospectus. Review of the completed FS-6500-25 forms or acceptable substitute will also be one of the components of the FAD made on the selected applicant. (Appendix 3B, pages 3 - 24-25, contains a copy of FS-6500-25.)

Specify in the instructions for FS-6500-25 the FS address to which the completed forms should be sent. Require all applicants to complete blocks 1 through 5 of the form and to send a copy to each financial institution with which they do business. Each of these financial institutions should

Chapter 3: The Prospectus

Considerations for Lashing a Prospectus: Application Evaluation Plan

complete blocks 6 through 15 of the form, and return it to the address specified in the form.

4. Fee to the Government

This criterion addresses the fee the concessionaire will pay for the use of Government-owned improvements and their associated land, as well as work that will be required to offset that fee. Refer to Chapter 5, Permit Fees and G-T Fee Offset,' for further discussion of these topics.

State that the Government is obligated to obtain fair market value for the use of its land and improvements. Specify how the fee will be determined, and the minimum fee. The prospectus should state that applicants may propose any fee they wish, but that the fee proposed may not be below fair market value. State that applicants may propose a fee higher than the FS stated minimum fee. The prospectus should also inform applicants that they may propose a fee below the stated minimum if they believe this lower fee represents a fair market value. However, state that an application with a proposed fee that is below the minimum fee may be rejected if the FS determines that the proposed fee does not reflect fair market value.

Applicants should also be asked to describe how they will plan and complete any G-T fee offset items. See "Development of a Prospectus," "The Opportunity," "G-T Fee Offset Agreement". in this chapter for information on this topic.

5. Fees Charged to the Public

Under this criterion, the services that will be provided are compared to the prices that will be charged for them. For example, an applicant that provides a wide range of quality services at a moderate price would receive a higher rating under this criterion than an applicant that provides a limited range of services for a high price.

Generally, the FS does not regulate prices, but reserves the right to do so. Market

mechanisms should dictate what users are charged at concession sites. In some locations, lack of competition may create a monopoly. It is appropriate in these circumstances to state that prices and price increases are subject to FS approval. Prices may be compared to prevailing rates for comparable services and facilities in the area, to determine if the public will receive a good value for the service provided.

Ask applicants to provide a list of all proposed fees to be charged to the public, including pricing policies, use fees, other service fees/rentals, and sundries. See 'Development of a Prospectus Proposed Operating Plan Provisions,' 'Concessionaire Income and Expenses, for a discussion of these types of fees. The proposed fees should be tied to the proposed operating plan provisions.

6. Willingness to Take Multiple Sites

Multiple sites may be included in the same prospectus. Separate permits may be issued for each site or administrative unit advertised in the prospectus. Alternatively, the FS may put multiple sites or all sites included in the prospectus under the same permit.

Putting several recreation sites or complexes under one permit may simplify administration or enhance the business viability of an opportunity. In determining whether to consolidate recreation sites, balance the advantages of simplified administration and enhanced viability against the disadvantage of reduced competition and impacts to small business.

The prospectus should specify whether a single permit or multiple permits will be issued, and if the latter, for which sites each permit will be issued. The prospectus must specify whether applicants may apply for any site or sites they wish, or whether applicants must apply for a minimum number of sites, a certain combination of sites, or all sites. If applicants may apply for any site or sites they wish, state whether or not applying for more sites or a certain combination of sites will result in a higher rating.

If the prospectus contains requirements concerning the number or combination of sites for which applicants may apply, applicants that do not meet those requirements may be deemed nonresponsive and disqualified from the competition. The prospectus must state that applicants that fail to meet these requirements will be deemed nonresponsive and disqualified from the competition.

7. Special Services

Special services that will be given significant weight in selecting an applicant should be enumerated as separate evaluation criteria and treated as required services. However, if special services are not going to be weighted significantly, they may be evaluated as a component of the proposed operating plan provisions without creating additional evaluation criteria. Such special services could include the following.

Interpretive Services

Include minimum specifications concerning interpretive services, such as the number and length of programs, days services will be offered, program content, target audience, and required experience for interpretive specialists. (Refer to Appendix 8C, pages 8–5-7.)

Security

Security could be used as a criterion if there is a need at a concession site for specialized safety skills and services, such as patrols, telephone communications, first aid, or security guards. Specify the types and levels of required skills and services.

Use of Specialized Professionals for G-T Fee Offset Work

If there are G-T fee offset projects that involve replacement of facilities, it may be desirable to have a qualified engineer or architect design or construct the projects.

Specify the minimum acceptable standard the design professional or firm must meet.

Accelerated G-T Fee Offset Work

This criterion may be useful if there is a major G-T fee offset project to complete. It may be important to evaluate applicants on the basis of how quickly the work will be done, especially if the work is essential. Accelerated G-T fee offset work requires a modified fee schedule, i.e., a large fee payment the first year and smaller fee payments in subsequent years. The large fee payment does not constitute an advance payment of fees and is not refundable should the permit terminate, or be revoked or relinquished. The cost of accelerated G-T fee offset work may not exceed the total estimated permit fees for the tenure of the permit. (See Chapter 5 for more information on G-T fee offset and long-term Government maintenance and reconditioning [M&R].)

Relative Importance of Evaluation Criteria

None of the evaluation criteria should be designated as "Pass/Fail," i.e., failure to satisfy one or more criteria may not result in disqualification of the applicant. The evaluation team should evaluate each application under all the evaluation criteria. Governmental entities and nonprofit organizations, such as interpretive associations, should compete under the same criteria as all other applicants.

In addition, failure to submit any of the information required in the prospectus should not result in disqualification of the applicant. A statement to the contrary should not be included in the prospectus. Each application may be evaluated based on what is submitted. Ratings may take into account the weakness or absence of required submissions. Consult with the local OGC and Procurement and Property staff before including a basis for disqualification in the prospectus, or disqualifying an application on any basis other than unwillingness to take multiple sites when taking multiple sites is required in the prospectus.

Chapter 3: The Prospectus

Considerations for Issuing a Prospectus: Application Evaluation Plan / Time Frame for Preparing a Prospectus

State in the prospectus the relative importance of each criterion. A statement that the criteria are listed in descending order of importance is acceptable, as long as there is not much difference in the importance assigned to any two consecutive criteria. If there is a significant difference, narratively describe that difference.

Numerical weights need not be disclosed in the prospectus. However, the relative weight must be disclosed in narrative form, e.g., Criterion 1 is more important than Criterion 2, and both are more important than Criterion 3. Where the prospectus is silent as to the relative importance of the criteria, they must be considered and evaluated as equal in importance.

Time Frame for Preparing a Prospectus

The lead time required to assemble a prospectus varies by area. Generally, it is best to begin the season prior to anticipated operation by a concessionaire. Allow potential applicants to visit during the operating season the sites that will be advertised in the prospectus.

In accordance with FSM 2344.32, allow time for the Regional Forester to review the prospectus.

The suggested application period is 30 to 45 days. Complex opportunities may require more time. If applications are due during an operating season, allow extra time to give current concessionaires an opportunity to respond.

Allow about 45 days for evaluation and selection.

A permit should not be issued until any administrative appeals involving the selection decision have been resolved through all levels. Therefore, allow time for resolution of administrative appeals. Allow at least 45 days from the date applicants are notified of the selection, since administrative appeals must be filed 45 days from that date. Review histories of administrative appeals for campground concessions, to determine how much time to allow for resolution of any appeals. It could take approximately another 90 days to resolve the appeal through the final level of review.

If the selection decision is not appealed, give the selected applicant sufficient preparation time by issuing the permit three months before the start of the operating season.

(Appendix 3C, pages 3–26-27, contains a sample time line for preparing a prospectus.)

Development of a Prospectus

To generate a sufficient number of applications that are acceptable to the FS and in the public interest, the concession opportunity must be clearly defined. The prospectus must specify the kind of special-use opportunity that is being advertised and what will and will not be permitted.

A prospectus should include relevant information regarding the concession. At a minimum, the prospectus should identify the scope and location of a proposed project, the minimum and maximum services that must be provided, performance standards, fees to the Government, and permit administration requirements. Information requirements should be presented clearly and clearly, so as to elicit responsive applications.

Prospectuses should be prepared using a clear and easily followed format, to ensure that all applicants compete on an equal basis. The entire package should be designed so that applicants compete under the same terms. To enhance consistency in program administration and to facilitate applying for concession opportunities in different Forests, a standard prospectus outline has been developed for concessions covered by this desk guide and is included as an appendix to this chapter (see pages 3–28-32). It includes generic headings, as well as subheadings tailored to a specific concession.

Keep the prospectus format simple to reduce printing costs. Refrain from including detailed maps or photographs that do not duplicate well. Keep all pages the same size, preferably 8 1/2" x 11". Keep binding simple, as applicants may pull the prospectus apart when preparing applications. The prospectus should be provided upon request in alternative formats such as Braille or audio tape.

When necessary, modification of the prospectus must be made in writing, before applications are due. Send amendments to everyone who has been sent a prospectus. When only a short time remains before the due date, consider extending

the due date. Extensions must be mentioned in the amendment; information given to one applicant must be furnished promptly to all others. Do not issue a permit unless amendments have been provided in sufficient time to allow all applicants to consider them in submitting or modifying their applications.

The following discusses sequentially the items found in a typical prospectus. (See Appendix 3D, pages 3–28-32, for a prospectus outline.)

Cover Sheet

At a minimum, the cover sheet should include the title of the prospectus, the name of the Forest and District where the concession is located, and the date the prospectus is issued.

Table of Contents

The table of contents lists headings and their corresponding page numbers in the prospectus, as well as any appendices, including maps and illustrations.

Introduction

The introduction is an overview of the information contained in the prospectus, including the opportunity being advertised and the selection process. Include a statement of the minimum fee to the Government. Reference any NEPA decisions that were made to approve issuance of the concession permit. Summarize the rationale for advertising the concession.

The introduction should also contain instructions for submitting applications. These instructions should specify the address to which applications should be sent, any labeling or packaging instructions, the date and time applications are due, the conditions under which the prospectus may be modified, and any rights reserved or conditions imposed by the FS in connection with issuance of the prospectus.

At a minimum, such rights and conditions should include the following statements:

Chapter 3: The Prospectus

Development of a Prospectus: Introduction / Site Descriptions and Income-and-Expense Data

- ☐ that all applicants have an equal opportunity to apply;
- ☐ that except for Members of Congress, Resident Commissioners, and current FS employees, any individual or entity may apply;
- ☐ that the FS does not guarantee a profitable operation; rather, applicants are responsible for reviewing the prospectus and making their own determination concerning business viability;
- ☐ that the FS is not obligated to accept the application with the highest return to the Government;
- ☐ that the FS reserves the right to issue the permit on the basis of a tradeoff between the fee to the Government and technical merit;
- ☐ that the FS reserves the right to issue a permit based solely on initial applications, without oral or written discussions;
- ☐ that the FS reserves the right to reject any or all applications; and
- ☐ that the FS reserves the right to rescind the prospectus at any time before a permit is issued.

The instructions should identify individuals to contact for more information. When more than one recreation site is advertised, include a contact person knowledgeable about each site. Provide the full name, title, address, telephone and telecopier numbers, and area of expertise for each contact.

Site Descriptions and Income-and-Expense Data

Describe the physical setting for the concession. At a minimum, describe the area, the sites advertised, the facilities on site, and supporting utilities (on and off site). In addition, provide data on income and expenses associated with management of the sites. The more complete and accurate the information, the more responsive the applica-

tions will be to the agency's and the public's needs.

Area Description

Describe the general location of the areas and sites included in the prospectus. Provide markers, such as the Forest, Ranger District, and county where the sites are located. Include a description of access to the area, major travel routes, proximity to urban areas, and where visitors come from. Consider adding information on climate, topography, vegetation, drainage, and other local attractions and recreation opportunities that affect use or operations. Also identify problems specific to the sites, such as plague, tree failures, and drought.

FS Site Descriptions

Describe each of the sites advertised in the prospectus. For each, specify whether use fees may be charged.

Government-Furnished Property

Provide an inventory of facilities at each advertised site, such as tables, fire rings, dumpsters, parking capacity, toilets, water systems and other utilities, docks, fish-cleaning stations, lagoons, trails, and campsites. Itemize and describe the facilities by type, condition, and accessibility.

Identify any special operating or maintenance requirements associated with the facilities in the inventory. This inventory should be placed in an appendix to the prospectus. Appendix 3E (pages 3–33-34) contains a sample inventory of Government-furnished property.

Government-Furnished Supplies

List supplies that will be provided by the FS to the concessionaire during the term of the permit, such as customer service comment cards, signs, and posters. The FS should not be furnishing any supplies for day-to-day operation of the concession. FS-furnished supplies should be limited to those necessary

Chapter 3: The Prospectus

Development of a Prospectus: Site Descriptions and Income-and-Expense Data / The Opportunity

for programmatic consistency or program administration.

Utilities

Identify available utilities, who owns them, who operates them, and the typical costs.

Generally, responsibility for operating utilities should be transferred to the concessionaire. However, in some cases the FS may retain responsibility for operating and maintaining utility systems. For example, the FS may continue to operate water and sewer systems where specialized knowledge, skill, or qualifications possessed only by the FS are required.

The FS may also continue to provide a utility such as electricity, if it supports FS administrative facilities or concession sites not included in the prospectus, such as electricity provided under a common power drop or through membership in a cooperative. State whether the concessionaire will be responsible for operating the water system year-round or just during the operating season.

Income-and-Expense Data

For existing concessions, provide either a three-year average of income or occupancy rates and price structure for the last three years for the sites included in the prospectus.

For new concessions, provide data on FS income and expenses for the sites advertised in the prospectus. Use actual costs when available; identify whether costs are actual or estimated. The Cost/Benefit Analysis for Conversion to a Concession completed by the FS (see Chapter 2, Appendix 2C, pages 2–11-12) summarizes FS income and expenses and should be attached as an appendix to a prospectus for new concessions.

Include a statement that a concessionaire may have income and expenses that the FS does not have, and vice versa; that the FS makes no guarantees with respect to the information provided in the cost/benefit analysis; and that applicants are responsible for reviewing the

prospectus and making their own determination concerning economic viability. The following applies to FS data on income and expenses.

Income

Income data should be based on data compilations for the last three years, if available. Include data on total use and total revenue collected, and a use fee schedule for that period.

Expenses

Cost data should be based on expenses incurred by the FS for operating the site. Display expenses in tabular format. At a minimum, show costs for personnel, contracts, vehicles, and supplies.

The Opportunity

This section describes FS policy, programs, and permit documents that govern operation of the concession. These operational aspects of the concession are standardized and not subject to variation. These operational aspects include (1) FS program and policy considerations, (2) the special-use permit, (3) the G-T fee offset agreement, and (4) standard operating plan provisions.

FS Programs and Policy

National Recreation Reservation Service

The National Recreation Reservation Service (NRRS) is the only authorized reservation system for concessions. Each Forest may decide whether participation is optional or required; the prospectus must state whether participation is optional or required. If participation is required, identify the sites (and which units, if not all) must be in the system. In either case, describe the reservation service and inventory condition reporting requirements, and provide a list of all sites currently enrolled.

The prospectus should explain how use fees for campsites in the system will be disbursed to the concessionaire, and any requirements applicable to sites in the reservation system. Discuss the procedures for making and

Chapter 3: The Prospectus

Development of a Prospectus: *The Opportunity*

canceling a reservation.

Appendix 8B is reserved for additional information on the NRRS, which will be developed in conjunction with award of the new NRRS contract. A National Recreation Reservation Service Guidebook has been drafted that provides detailed information on the NRRS. Consult the chapter on permit administration for specific language to insert in prospectuses, operating plans, and reservation plans with respect to the NRRS in general and to ensure holder compliance with changes to the NRRS in particular.

Golden Age / Golden Access Passports

State that concessionaires must honor Golden Age and Golden Access Passports. These entitle the holder to a 50 percent discount on use fees that are charged per vehicle, per person, or per single-family unit.

Camp Stamps

Concessionaires must honor Camp Stamps, and may submit them to the FS for reimbursement.

Free Fishing/Camping Day Policy

Note Forest policy on free fishing/camping days. Until national policy is adopted, mandatory participation in these events by concessionaires is discouraged, but voluntary participation is encouraged.

Customer Service Comment Cards

State that the concessionaire will be required to make available to the public Form FS-1300-5, Customer Service Comment Cards (see Appendix 8F, pages 8 - 16-17). Some Forests and Regions have other forms besides the Customer Service Comment Card. Indicate whether there are other customer feedback forms that must be made available to the public.

Any required forms must have an Office of Management and Budget (OMB) control number for Paperwork Reduction Act compliance. Indicate whether applicants will receive additional evaluation credit for instituting a customer feedback program of their own, as

part of their business.

Compilation of Use and Revenue Data

This section describes requirements for compiling and submitting use and revenue data. A standard form is provided in Appendix 8A (page 8-3), which is being submitted for an OMB control number for Paperwork Reduction Act compliance. Supply copies of this form, and instruct applicants that they must use it or provide comparable data in an alternate format. Indicate that the FS may require participation in recreation use surveys that the agency conducts.

Performance Evaluations

Indicate that a mid-year and an annual performance evaluation will be performed, and that an unsatisfactory annual rating may be cause for suspension or revocation of the permit. Also state that a sustained satisfactory performance is necessary an extension. (See Chapter 7 for a complete discussion of performance evaluations.)

Accessibility

Offering accessible programs is required by law, makes good business sense, and provides better customer service.

The Forest Service is responsible for ensuring that any Government M&R performed at concession sites meets both Uniform Federal Accessibility Standards (UFAS) and Americans With Disabilities Act Accessibility Guidelines (ADAAG), where applicable, and that outdoor recreation opportunities (e.g., trails or fishing stations) meet the agency's accessible outdoor-recreation guidelines, *Universal Access to Outdoor Recreation; A Design Guide*, until the Architectural and Transportation Barriers Compliance Board (Access Board or ATBCB) finalizes ADAAG for outdoor recreation.

It is the responsibility of the FS to perform a self-evaluation of programs and facilities for accessibility, and to develop a transition plan. Use the transition plan as appropriate to develop requirements for program accessibility in the prospectus.

Chapter 3: The - Prospectus

Development at a Prospectus: *The Opportunity*

ADAAG, and the agency's accessibility guidelines. (See Chapter 5 for discussion of Government M&R and G-T fee offset.)

Additionally, state that it is the concessionaire's responsibility to ensure effective communication with interested persons, including individuals with impaired vision or hearing, so that all visitors may obtain information on accessible services, activities, and facilities. Concessionaires must ensure effective day-to-day communication with individuals with disabilities, in accordance with 7 CFR 15e, Section 504 of the Rehabilitation Act, as amended, and other related Federal and state laws. Information should be provided, upon reasonable request, in alternative formats such as braille, audio tape, and large print. Sign language interpreters require advance notice (usually 48 hours) for scheduling. Inform the concessionaire of available services in the area and the lead time required to obtain them.

Special-Use Permit to Be Issued

State that the selected applicant will be required to comply with a special-use permit, and that a standard permit for this type of concession is attached as an appendix to the prospectus. When completed, Appendix 3F will contain the standard special-use permit, FS-2700-4h, Special-Use Permit for Campground and Related Granger-Thye Concessions..

This section discusses permit provisions specific to concessions covered by this desk guide (permit term and renewal), and a fairly new provision (responsibility for day-to-day activities).

Permit Term

Refer to Clause I.C of FS-2700-4h. The agency reserves the right to set the term for the permit. The prospectus must specify the permit term. The initial term will typically be five years, with an option to extend the permit term for five years at the sole discretion of the authorized officer. The decision to extend the term must be based on sustained satisfactory performance. (Refer to Chapter 7 for a detailed discussion of performance

evaluations.) The agency may issue a permit for a shorter term, based on administrative need. For example, the opportunity may be for a three- or one-year permit with no extension, when a capital investment project is anticipated.

Until agency policy has been changed, issue permits with a one-year term, with an option at the agency's sole discretion to extend the permit term for four consecutive one-year periods, or with a three-year term, with an option at the agency's sole discretion to extend the permit term for two consecutive one-year periods. (Refer to Chapter 7 for a detailed discussion of performance evaluations.)

Renewal

Refer to Clause I.D of FS-2700-4h. FS-2700-4h does not provide for renewal. Once the permit expires, continuation of the type of use and occupancy authorized by the permit is at the sole discretion of the authorized officer, and must be subject to a competitive offering.

Responsibility for Day-to-Day Activities

Refer to Clause II.F of FS-2700-4h. As a general rule, the holder must conduct the day-to-day activities authorized by the permit. Some, but not all, of these activities (such as boat rentals or garbage disposal) may be conducted by a party other than the holder, but only with prior written approval of the authorized officer. The holder will continue to be responsible for compliance with all the terms of the permit.

G-T Fee Offset Agreement

As owner of the improvements, the Government bears responsibility for M&R that extend the life of the improvements. All or part of the permit fee may be offset by the cost of Government M&R. (See Chapter 5 for a detailed discussion of these topics.) G-T fee offset projects must be documented in an annual G-T fee offset agreement that will become part of the permit. The agreement may be amended at the agency's discretion.

Chapter 3: The Prospectus

Development of a Prospectus: The Opportunity

The following should be specified in this section:

- ☐ A description of Government M&R.
- ☐ The portion of the permit fee that will be offset by Government M&R.
- ☐ A prioritized list of G-T fee offset projects that may be required. Describe the work and its location, estimated cost, specifications, and deadlines. This list should be included in an appendix to the prospectus. (Appendix 5A contains a sample list of G-T fee offset projects, and Appendix 5B contains a sample G-T fee offset agreement.)
- ☐ Specification of requirements for G-T fee offset projects, including use of a particular brand or color of paint to match existing facilities, a particular brand or model for a replacement item, or a certain technique for a particular job. Note that placing too many limitations on the concessionaire may unnecessarily increase the cost of projects. Provide available design standards.
- ☐ Indicate whether the concessionaire will be required, or has the option, to enter into a collection agreement with the FS to perform Government M&R. (See Chapter 6 for a discussion of collection agreements.)
- ☐ A description of G-T fee offset accounting procedures. (See Chapter 5 for more information on this subject.)

Standard Operating Plan Provisions

An annual operating plan (AOP) must be prepared by the concessionaire and approved by the authorized officer. The AOP will become part of the permit. This section of the prospectus addresses FS requirements for the AOP that have no bearing on the selection process.

The AOP will elaborate on agency policy and permit clauses by establishing schedules, due dates, and details concerning implementation. These items do not need to be addressed in applications. Rather, they may be coordinated with the selected applicant. However, providing an outline of standard AOP provisions will give

prospective applicants a complete understanding of the operational requirements governing the concession sites.

Not every AOP will have the same combination of standard provisions. The selection of standard AOP provisions may vary, depending on the nature of the concession. The following is a list of some standard AOP provisions that are of general interest, and instructions on how to draft them. Where appropriate, they are keyed to corresponding clauses in FS-2700-4h.

Site Capacities

Identify any unit capacities for sites, including single and multiple units, group areas, and parking areas. This information may be provided in an appendix to the prospectus. Describe any use restrictions, such as boating or floating restrictions, and how the concessionaire should enforce them.

Reserved Administrative Use

if the FS anticipates using campsites or other facilities for administrative purposes, specify the number of sites and days that will be reserved by the FS. For example, 'Campsite #10 is reserved from June 15 to July 15 for a Forest Service field biologist at no cost to the agency, or "The Forest Service reserves the right to use Group Shelter #3 for three days during the season."

Capital Investment Projects

Where G-T fee offset cannot generate enough funds to cover the cost of needed Government M&R at a concession site, capital investment projects may be required. Anticipate these projects before issuing a prospectus, and describe them in the prospectus. Stagger the work so that most of the concession is operational during construction. Notify applicants of the sequence in which the work will be done, and state that once a portion is finished, it will become available for operation.

If income-producing sites will be affected, inform applicants of how many sites will be closed each season. For example, "Loop C

Chapter 3: The Prospectus

Development of a Prospectus: *The Opportunity*

(25 units) will be under construction in 1999. Once completed and operational, Loop C will be opened, and Loop B (30 units) will be closed for renovations. State that the Forest Service shall not be liable for any claim for damages associated with closure of sites under construction. Include the same statement in the AOP.

Holder-Furnished Property

State that the concessionaire will be expected to provide all supplies, equipment, and vehicles necessary to operate the concession sites in accordance with permit and AOP requirements. All-terrain vehicles, motorcycles, motorbikes, and similar vehicles may not be used at concession sites without prior written approval from the FS. Vehicles must be attractive, clean, quiet, and well maintained. A professional-caliber sign containing the concessionaire's name must be displayed on the door of each vehicle used at concession sites.

A sample list of holder-furnished property may be included as an appendix to the prospectus. (Appendix 3G, on page 3-54, contains a sample list of holder-furnished property.)

Holder M&R

Refer to Clauses II.C and IV.E.1(c) of FS-2700-4h. The concessionaire, at its expense, will be required to perform holder M&R under a holder M&R plan developed by the FS that will become part of the AOP. This section defines holder M&R and describes required holder M&R responsibilities and their frequency. A holder M&R plan should be included as an appendix to the prospectus. (Appendix 3H, pages 3 - 55-56, contains a sample holder M&R plan.)

Preseason Preparation and Post-Season Cleanup

List the work to be done to open each site. List the work to be done at the end of the

season for each site. Describe activities and minimum standards.

Other Special Uses

Refer to Clause I.G of FS-2700-4h. Describe any other scheduled or existing special uses in the permit area, such as grazing, outfitting and guiding, and recurring recreation events.

Site Protection

Clauses II.G, III.F, III.G, and V of FS-2700-4h address the concessionaire's site protection responsibilities. Note whether a vegetation management plan exists, and whether it contains conditions the concessionaire must meet. Acknowledge threatened-and-endangered-species protocols that may exist.

Erosion Control

Refer to Clause III.G of FS-2700-4h. The AOP should address appropriate erosion control practices during and after site construction and other ground-disturbing projects.

Site Hazards

Refer to Clause II.G and III.E of FS-2700-4h. The concessionaire should conduct a preseason inspection of the sites to identify existing and potential hazards, including hazard trees. The concessionaire is responsible for monitoring and identifying hazard trees. The concessionaire will also remove hazard trees, subject to prior FS approval. The AOP should address appropriate disposal, e.g., the AOP may state that the FS will sell commercial-grade timber. The FS may conduct timber sales following significant blowdown. Monitoring, identification and removal of hazard trees are holder M&R. Discuss frequency and cost of hazard tree removal at each site, if atypical. Describe any conditions, such as stand age, density, and weather patterns, that would tend to increase the number of hazard trees.

Chapter 3: The Prospectus

Development of a Prospectus: The Opportunity I Proposed Operating Plan Provisions

Wind Damage

Refer to Clauses III.E and III.F of FS-2700-4h. Describe whether and how the concession sites are susceptible to wind damage.

Fire Prevention

Refer to Clauses III.E and III.F of FS-2700-4h regarding fire prevention requirements. The AOP should address how the concessionaire should report fires, and the concessionaire's responsibility for fire tools and equipment and fire suppression.

Butane and Propane Installations

Refer to Clause V.G of FS-2700-4h, which applies if the concessionaire is allowed to install butane or propane tanks. Specify any approved sites for these installations.

Refer to Clause III.G of FS-2700-4h for the following three items.

Grizzly Bear, Black Bear, Cougar, and Other Predators

The AOP should address any restrictions on use due to grizzly bears, black bears, cougars, or other predators; and safety requirements for the concessionaire, such as firearms.

Diseases (Hantavirus and Plague)

The AOP should address the history of and procedures for infestation areas that would affect a concession.

Rodent Control

The AOP should address procedures for rodent control, including type, use, and timing of treatments and disposal of carcasses. It should also address proposed rodent control treatments. Include appropriate provisions for protection of National Forest System resources.

Herbicide/Insecticide Use

Refer to Clause V.D of FS-2700-4h. The prospectus should cite any restrictions on herbicide and insecticide use, such as type, use, and timing of treatments; disposal of waste products; and any certifications that are required. The AOP should address proposed herbicide or insecticide treatments. Include appropriate provisions for protection of National Forest System resources.

Construction Safety

Refer to Clause III.G of FS-2700-4h. The AOP should describe appropriate construction safety standards.

Boating Safety

The AOP should address restrictions and requirements that apply to boating safety, including certifications required for providing services.

Advertising

The concessionaire must address proposed advertising in the AOP, in conformance with Clauses II.H and VII.B of FS-2700-4h.

Signs and Posters

Refer to Clause II.H of FS-2700-4h. The AOP should address who is responsible for furnishing signs and posters. The FS is responsible for providing all Title VI signs and posters. Describe required signs and sign standards. Content, location, and quantity of signs and posters must be approved by the FS.

Proposed Operating Plan Provisions

This section identifies operational aspects of the concession that are not standardized and that therefore may vary by applicant. Require applicants to submit proposed operating plan provisions that respond to each of the items covered in this section of the prospectus. For some items, the prospectus will specify minimum requirements and allow

Chapter 3: The Prospectus

Development of a Prospectus: Proposed Operating Plan Provisions

applicants to propose services that exceed the minimum. For other items, the prospectus will ask applicants to address a given topic.

Operating Season

Describe the minimum acceptable operating season. Specify the beginning and ending dates for a typical season; any foreseeable conditions, like snow depth, that may affect the season of use; and use patterns, such as peaks and valleys. List restrictions on use outside the typical operating season and any capacity limits during the shoulder season. Indicate whether an extended season may be proposed.

Staffing

This section describes minimum staffing levels for the concession, and FS expectations for concessionaire employee conduct.

Supervision/Management

Specify whether a site or area manager will be required to supervise concessionaire employees and to serve as the principal contact with the FS. Specify FS requirements for the site or area manager, including experience and qualifications. Ask applicants to describe how managers and employees will communicate.

Personnel

Specify the minimum number of employees required to manage the concession sites. Specify FS requirements for concessionaire employees, including experience and qualifications. State that the concessionaire must comply with all applicable Federal and state labor laws. (See Appendix 8D, pages 8–8-10, for more information on concessionaire compliance with labor law.)

Employee Training

Ask applicants to describe the training employees will receive, to meet the minimum requirements of the prospectus.

Employee Housing and Services

State whether campsites and other Government facilities and services (such as toilets, electricity, and refuse disposal) are available for concessionaire employees and, if so, at what cost. If the concessionaire must provide employee housing and services, describe limitations on usage (such as seasonal restrictions), and other requirements.

Employee Conduct

Specify FS expectations for concessionaire employee conduct, both on the job and off duty on the premises. State that concessionaires, not the FS, are responsible for the conduct of their employees.

Uniforms

Do not require or allow concessionaire employees to wear FS uniforms or FS uniform components. Any work apparel worn by concessionaire employees must be distinctly different from the FS uniform in design, color, and insignia; must include identification of the concessionaire by patch or name tag, and identification of the employee by name tag; and must be approved by the authorized officer.

Required Services

This section specifies operating requirements for the concession sites, including all minimum service levels. The FS must clearly articulate minimum acceptable standards for required services and, as appropriate, for optional services. Ask applicants to propose services above the minimum standards. Minimum standards set in the prospectus should track with minimum standards in the AOP and standards in the performance evaluation.

Operation of the Concession

In this section, describe work relating to operation of the concession.

Chapter 3: The Prospectus

Development of a Prospectus: *Proposed Operating Plan Provisions*

Hours of Operation

Specify the minimum hours that the sites must be open, including daily hours of operation for all sites, fee booths, and visitors' centers. Indicate whether extended hours may be proposed.

Cleaning and Maintenance

Specify minimum standards for cleaning and maintenance. In developing these, refer to the standard performance evaluation form contained in Appendix 7A (pages 7 - 4-7). Have applicants describe how the facilities and surrounding areas will be cleaned and maintained to these standards. Have applicants address refuse disposal, toilet pumping, and other periodic cleaning.

Emergency Response

All emergencies at concession sites should be reported to local authorities. In this section, ask applicants to describe how they will respond to emergency situations, how they will provide information and assistance to the public, and how they will handle public criticism of emergency response. Applicants should show how hours of operation, communications, and employee training and supervision will be integrated in these situations.

Law Enforcement

The FS, state and local law enforcement officials, and the concessionaire each have specific enforcement roles at concessions. (Refer to Appendix 8E for a detailed discussion of this topic.) Specify the respective enforcement responsibilities of the FS, state and local officials, and the concessionaire. Discuss any issues or requirements that may affect the cost of concessionaire enforcement responsibilities, including enforcement of site capacities. Ask applicants to address how they will fulfill the concessionaire's role and responsibility for law enforcement, including rules of use they will impose at the sites.

Customer Feedback

Ask applicants to specify how they will handle customer complaints.

Other Required Services

Describe any additional services that are required.

Optional Services

If any of the items in this section are considered essential, move them into the section on required services. List requirements for optional services and the minimum standards that apply. These may include interpretive services, law enforcement patrols, and rental of equipment such as boats and bicycles. Specify that if the FS selects an application that includes optional services, they will be included as required services in the APO.

Interpretive Services

Describe any requirements for interpretive or environmental-education programs or materials within the permit area. Ask applicants to describe how they will enhance the visitor's enjoyment of the National Forests, and what kinds of information they will provide. (See Appendix 8C, pages 8 - 5-7, for further details.)

Communication Systems

The concessionaire is responsible for communication systems needed for concession operations. Describe communication equipment or services that applicants may propose. FS radios and frequencies may not be used by concessionaires under any circumstances.

Managing Non-Fee Sites

Management of non-fee sites may be required for a concession with multiple sites. If so, include this item in the section on required services, and describe any applicable requirements. Management of non-fee sites may also be proposed as an optional service. If so, describe which sites may be included. In either case, identify any conditions the conces-

Chapter 3: The Prospectus

Development of a Prospectus: Proposed Operating Plan Provisions

sionaire must meet to charge a fee at these sites in the future. List any sites where fees may not be charged under any circumstances. (See "Development of a Prospectus," "Proposed Operating Plan Provisions," "Concessionaire Income and Expenses," for more information on this topic)

Recycling

State requirements for continuing existing recycling programs, and for establishing new ones.

Accelerated G-T Fee Offset Work

Unless it is already covered as a separate evaluation criterion, specify the accelerated schedule for G-T fee offset work that may be proposed. The cost of G-T fee offset work under the schedule may not exceed the total estimated permit fees for the initial term of the permit, which will typically be five years once current policy has been revised. (See Chapter 5 for more information on G-T fee offset and long-term Government M&R.)

Other Optional Services

Describe other optional services that may be provided, such as boat or bike rentals or firewood sales.

Concessionaire Income and Expenses

In this section, require applicants to forecast income and expenses for the concession and other business obligations. State that the income-and-expense forecast will be used in assessing the proposed fee to the Government and in making a FAD on the selected applicant.

The forecast should display expected monthly volume of business, revenue, and cash needs, including a detailed breakdown of expenditures by category or expense, for at least the first year of the concession and for all other business obligations. The forecast should enumerate the use fee structure and estimated annual visitation by fee class. If the requisite cash is not readily available, the cash flow forecast should identify

how equipment and working capital will be funded.

The following are typical income-and-expense categories and a description of requirements in those categories, which applicants should address in their forecast.

Income Estimates

Pricing Policies

Request applicants to describe their pricing policies, including senior or family discounts, season passes, and variable pricing (such as for proximity to water, weekday versus weekend use, location, or availability of utility hookups or other amenities). State that pricing must be non-discriminatory (senior discounts must be made available to all who qualify, for example).

Use Fees

State that concessionaires may charge use fees only to the extent that the FS could charge them under the Land and Water Conservation Fund Act. Specifically, proposed fees must be specified per vehicle, per person, or per recreation unit.

Campgrounds designated for charging fees must have a majority of the following:

- ☐ Tent or trailer spaces.
- ☐ Picnic tables.
- ☐ Drinking water.
- ☐ An access road.
- ☐ Refuse containers.
- ☐ Toilet facilities.
- ☐ Personal fee collection by an employee.
- ☐ Reasonable visitor protection.
- ☐ Simple devices for containing a campfire, where campfires are permitted.

Concessionaires may not charge for any of the following, whether used singly or in any combination:

- ☐ Drinking water.
- ☐ Wayside exhibits.
- ☐ Roads.
- ☐ Overlook sites.

Chapter 3: The Prospectus

Development of a Prospectus: Proposed Operating Plan Provisions

- ☐ Visitor centers.
- ☐ Scenic drives.
- ☐ Toilet facilities.

Concessionaires may not charge at sites that have no other facilities besides picnic tables.

The payment of a campground use fee should cover the use of adjacent day use sites, such as a beach. Concessionaires may charge for managed parking lots. However, they may not charge for a managed parking lot that serves an area for which a use fee is already charged.

In addition, state any applicable Forest or Regional policies on use fees (e.g., no more than two vehicles per campsite, and first- and second-vehicle charges). Specify the range of allowable options, including fees for multiple family units and group sites.

Other Service Fees/Rentals

These fees are for special services or rentals, such as trailer, boat, or bike rentals, dump stations, managed parking, and boat launch fees. Have applicants describe the services they will provide, and the fees they will charge for those services. Include any limitations on service fees and rentals.

Sundries

Request applicants to describe any goods that would be provided for a fee, such as firewood, ice, soda, propane, fishing tackle, and groceries. If there are concession stands, request a menu and price list. Include any limitations on sale of sundries.

Fee Collection and Refunds

Ask applicants to describe fee collection and enforcement procedures, how visitors will be notified of fee collection procedures, and financial and security controls for fee collection. Ask applicants to enumerate refund procedures, and specify any FS requirements for refunds.

Expense Estimates

Fee to the Government

Ask applicants to include their proposed fee to the Government in their expense estimates.

Deposits and Advance Payments

Specify any required deposits and advance payments, such as special assessments for FS-provided utilities. If any advance payments are required, describe how they will be estimated and the schedule of payments. (See Chapter 5 for a detailed discussion of advance permit fee payments.) Ask applicants to estimate these costs.

Federal, State, and Local Taxes, Fees, and Licenses

Describe any Federal, state, and local taxes, fees, and licenses for which the concessionaire will be responsible, such as a certificate for operating a water system. Consult the local county assessor for a list of applicable local taxes and fees. Some counties have initiated transient room taxes that apply to campgrounds. Sales tax and personal-property taxes will also apply. Have applicants estimate these costs.

Holder M&R

Ask applicants to estimate holder M&R costs identified under "Required Services" above.

Insurance

Specify any insurance requirements, including the types of insurance and coverage amounts, inclusion of the FS as an additional insured in any policies, and proof that insurance requirements are met. Have applicants estimate insurance costs. (See Chapter 6 for a detailed discussion of insurance.)

Bonding

Specify any bonding requirements, including the types of losses to be covered and the coverage amounts. Ask applicants to estimate

bonding costs. (See Chapter 6 for a detailed discussion of bonding.)

Pre- and Post-Season Operations

Ask applicants to include in their estimates any special costs relating to opening or closing the concession sites, such as treatment of water or sewer systems.

Storage

Have applicants estimate any costs associated with on- or off-site storage of concessionaire equipment and supplies at the concession sites.

Utilities

Provide a list of any utility systems that will be the concessionaire's responsibility. Describe any cost components or technical requirements that will affect operation of these systems. Reference applicable operating standards in an appendix to the prospectus. State whether the concessionaire may have third parties perform certain functions, such as water testing or garbage collection, and if so, what standards must be met. Identify any shared utilities and other users. Identify if there is separate metering for utilities, or if a cost-share agreement will be necessary. Ask applicants to estimate costs associated with utilities that are the concessionaire's responsibility.

The following is additional guidance by type of utility.

Garbage Collection/Disposal

If dumpsters or garbage cans are available from the FS, describe their location, quantity, size, and condition. Describe any special garbage collection and disposal fees. If the concessionaire must offer garbage disposal service, identify the nearest landfill. Provide an estimate of unit cost.

Water System Operation and Testing

Describe any costs associated with water system operation, testing, monitoring, pre-season opening, and post-season closure. Costs should reflect operating the system to state standards.

Electricity

Specify whether electrical service is provided, and if so, who provides it and the typical cost per kilowatt. State whether the concessionaire will be charged for year-long use or just during the operating season. Specify the number and location of any sites with electrical service.

Natural Gas/Propane

Specify whether natural gas or propane service is provided and, if so, who provides it and the typical unit cost. Specify the number and location of any sites with natural gas or propane service. State whether the concessionaire will be charged for year-long use, or just during the operating season.

Sewage

Specify whether sewer service is provided and, if so, who provides it and its monthly cost. State whether the concessionaire will be charged for year-long use, or just during the operating season. Specify the number and location of any sites with sewer service.

State whether there is a recreation vehicle dump station at any of the concession sites or in the area, and specify the operating costs for the station.

Toilet Pumping

If toilet pumping is required, identify who will supply the service, the typical cost per vault, and how often the concessionaire will have to pump the vaults. List the number and location of vault toilets.

Chapter 3: The Prospectus

Development of a Prospectus: Proposed Operating Plan Provisions / Other Required Submissions

Personnel

Ask applicants to estimate personnel costs associated with any requirements identified under "Development of a Prospectus," "Proposed Operating Plan Provisions," and "Staffing."

Employee Housing

Ask applicants to estimate any costs associated with employee housing.

Other Required Submissions

The prospectus must identify any additional required submissions. These requirements may vary with the scope and nature of the project. The following discusses additional submissions that should be required in every prospectus.

Financial Documents

In addition to a completed FS-6500-25, certain financial information should be submitted by applicants to make the FAD. Any financial information submitted by applicants should conform to generally accepted accounting principles or other comprehensive bases of accounting. Any previously prepared financial documents that are submitted should be unredacted and in their original form; any footnotes in the original should be included.

Financial statements may be audited, reviewed, or compiled by certified public accountants (CPAs). Auditing entails the greatest amount of CPA involvement, and compilation the least. Whether and how much a CPA is involved in the preparation of financial statements, and whether financial statements are required, depend on the size of the concession and the degree of expected risk associated with it. See FSH 6509.18 and consult with a local FS accountant to determine whether CPA involvement is preferred (and, if so, to what degree), and what type of documentation is required. The following outlines documentation that should be requested when CPA involvement is preferred, and when it is not.

When CPA Involvement Is Preferred

Request a complete set of all financial statements for the last three fiscal years that have been audited, reviewed, or compiled by a CPA. For financial statements that have merely been compiled by a CPA, request applicants to complete Parts (D)(1) or (D)(2) of Form FS-6500-24, "Financial Statement," to obtain certification from applicants as to the accuracy of the financial statements. (Appendix 3I contains a copy of FS-6500-24.)

If financial statements have not been audited, reviewed, or compiled by a CPA for the last three fiscal years, request a completed FS-6500-24 for any fiscal year applicants were in business during the last three fiscal years for which an audited, reviewed, or compiled financial statement was not prepared. Limited-liability companies should list the name of the company in Block 1 and the names and interests of the principals in Block 5, and complete the certification in Part (D)(1) of FS-6500-24.

In addition to any documentation provided under the above two paragraphs, for applicants that have not been in business for the last three fiscal years and therefore cannot submit audited, reviewed, or compiled financial statements and/or an FS-6500-24 for that period, request two fiscal years of projected financial statements, compiled by a CPA using the forecast method.

When CPA Involvement Is Not Preferred

If financial statements are required, request a completed Form FS-6500-24 for any fiscal year applicants were in business during the last three fiscal years. Limited-liability companies should list the name of the company in Block 1 and the names and interests of the principals in Block 5, and complete the certification in Part (D)(1) of FS-6500-24.

In addition to any documentation provided under the paragraph above, for applicants that have not been in business for the last three fiscal years and therefore cannot submit

Chapter 3: The Prospectus

Development of a Prospectus: Over Req. Submissions t Eval. Criteria / Permit-Issuance Prerequisites / Appendices & Other Doc's

an FS-6500-24 for that period, request two fiscal years of projected financial statements, compiled by a CPA using the forecast method.

Miscellaneous Submissions

There may be additional required submissions, depending on the concession.

Evaluation Criteria

Enumerate the criteria and their relative importance, and discuss the rating method to be used, as developed in the application evaluation plan. State the minimum fee in the criterion on Fee to the Government.

Prerequisites to Issuance of a Permit

Enumerate prerequisites to issuance of a permit. State that if these prerequisites are not met within 30 days of the date of the selection letter, a permit will not be issued to the selected applicant, and that the applicant that receives the next highest rating will be selected for a permit, subject to a FAD and other prerequisites to permit issuance specified in the prospectus.

Prerequisites to permit issuance should include:

- ☐ A determination of financial ability.
- ☐ A special-use permit, executed first by the selected applicant and then by the FS.
- ☐ An annual operating plan, completed and signed by the selected applicant and submitted to the FS for approval.
- ☐ An annual agreement for any G-T fee offset work required by the FS, executed first by the selected applicant and then by the FS.
- ☐ Meeting all insurance requirements.
- ☐ Meeting all bonding requirements.
- ☐ Making any required deposits and advance payments.
- ☐ Obtaining any required certifications, and meeting any other prerequisites.

Appendices and Other Documents

Following are a list of mandatory and optional appendices to the prospectus, a list of documents that are available to applicants upon request, and a list of documents that should be sent to the selected applicant. Other mandatory and optional appendices may be attached to the prospectus.

Mandatory Appendices

- ☐ Form FS-2700-4h, Special-Use Permit for Campground and Related Granger-Thye Concessions.
- ☐ Annual Operating Plan Outline
- ☐ Annual G-T Fee Offset Agreement
- ☐ Sample Holder M&R Plan
- ☐ Facility and Improvement Inventories "Operation of Federally Owned Drinking Water Systems"
- ☐ Vicinity Map
- ☐ Recreation Site Maps
- ☐ Form FS-6500-25, Request for Verification.
- ☐ Form FS-6500-24, Financial Statement'.
- ☐ Standard Performance Evaluation Form for Campground and Related G-T Concessions.
- ☐ Cost/Benefit Analysis for Conversion to a Concession Completed by FS (for New Concessions).

Optional Appendices

- ☐ A Sample Business Plan
- ☐ Sample List of Holder-Furnished Property
- ☐ Sample Collection Agreement
- ☐ Forest Orders that Apply to the Concession
- ☐ Vegetation Management Plan

Documents Available upon Request

- ☐ EA and NEPA Decision Notice for the Concession Opportunity
- ☐ National Recreation Reservation Service Plan (reserved)
- ☐ Accessibility Self-Evaluation and Transition Plan
- ☐ Recreation Site Use Reporting Form
- ☐ *Cleaning Recreation Sites: An Update*, August 1995.

Advance Public Notice

Notice of the Opportunity

Advance public notice generates interest from potential applicants in the business opportunity that will be advertised in the prospectus. At a minimum, advance public notice requires publication in a local or regional newspaper of general circulation in the vicinity of the opportunity. Give further notice by advertising in the *Commerce Business Daily* and *The Wall Street Journal*, or by posting in public places. Submit the notice for publication 15 to 30 days before issuance of the prospectus.

Include the following:

- ☐ Location and type of special-use opportunity.
- ☐ Extent and duration of the opportunity.
- ☐ How potential applicants can obtain information.

Target Audience

To reach an interested audience, a targeted mailing may also be appropriate. Include parties who have expressed interest, trade organizations, and past and current concessionaires. Some techniques to generate interest include:

- ☐ Advertising in a trade journal or association newsletter. Contact the National Forest Recreation Association and advertise in its newsletter.

- ☐ Developing an information handout.
- ☐ Sending a solicitation-of-interest letter to all parties who might be interested (see Appendix 3J). Describe the proposed concession, and invite them to write for more information. All sites that are being considered for inclusion in the prospectus should be listed, to give potential applicants a chance to inspect them before the prospectus is issued. The FS is not obligated to include all those sites in the prospectus.
- ☐ Holding an on-site event or providing a map so that interested parties may tour the site on their own. Field visits give potential applicants an opportunity to observe administration and operation of the campground firsthand during the operating season. Have the following information available for interested parties:
 - ‡ Location and maps of campgrounds being considered for the prospectus.
 - ‡ Number and type of units and facilities.
 - ‡ Operating season and amount of use.
 - ‡ Average receipts collected per campground.
- ☐ Sending a prospectus to those at the event who asked for one, and to those who have expressed interest.

This process ensures that the largest group of potential applicants will be reached, and that the group will be narrowed to those who are genuinely interested in participating.

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| Chapter 4 |
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| Selecting a Concessionaire |
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This chapter discusses the selection process. See Appendices 4A through 4D on pages 4-6—4-14 for a more detailed discussion of the selection process.

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| Evaluation Method |
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Rank the criteria using the fixed-weight or non-fixed-weight method described below.

Fixed Weights

The simplest method is to assign a certain percentage to each criterion, based on a total of 100 percent; or to assign specific points representing the importance of each criterion, e.g., Criterion 1 = 50 points, Criterion 2 = 30 points, and Criterion 3 = 20 points. Because this method requires exactness, it is fairly restrictive in terms of how applications are evaluated.

Non-Fixed Weights

The non-fixed-weight method uses adjectives to describe the relative importance of criteria, without assigning specific points or percentages, such as:

The proposed operating plan is the most important criterion; it is more important than business experience. Both of these criteria are more important than the availability of financial resources, and the least important criteria are the fee to the Government and use fees charged to the public, with the former being more important than the latter.

The evaluators then score each application based on this descriptive ranking of the criteria, rather than on a numeric ranking. A point total may still be assigned to each application.

Thus, an application evaluated under the non-fixed weights in the above example, with an excellent operating plan and business experience, good availability of financial resources, a fairly low proposed fee to the Government, and an average proposal for use fees charged to the public may be given a total of 80 out of 100 total points. Another application with an average operating plan and business experience, fair availability of financial resources, a fairly high proposed fee to the Government, and an excellent proposal for use fees charged to the public might be rated 65 out of 100 points.

The non-fixed-weight method is a more subjective means of evaluation, but has the advantage of allowing evaluators to rank applications without being constrained by precise numerical weights. It has the disadvantage of being less defensible than the fixed-weight method, because of its greater subjectivity. An applicant who receives a score that is only a few points lower than the successful applicant's (e.g., 20 points lower when the total possible score is 100) may complain that the evaluation was unfair. Without fixed weights, it is more difficult to justify the evaluation process that led to the lower score.

Regardless of which method is used, the evaluation team may wish to consider using a tradeoff analysis, to weigh technical merit and the fee to the Government. This process is explained in the next section.

Tradeoff Analysis

Include a statement in the prospectus reserving the right of the FS to issue the permit on the basis

of a tradeoff between the fee to the Government and technical merit. This approach allows the FS to determine whether an application with a high technical rating justifies accepting a lower fee. For example, assume the following ranking for three applications:

| <u>Application</u> | <u>Technical Score</u> | <u>Fee</u> |
|--------------------|----------------------------|------------|
| 1 | 900 | \$25,000 |
| 2 | 700 | \$40,000 |
| 3 | 600 | \$35,000 |

Tradeoff analysis allows evaluators to determine whether the higher technical rating for Application 1 (900) justifies the lower fee (\$25,000), or whether the higher fee for Application 2 (\$40,000) justifies the lower technical rating (700). It may be necessary to look at the annual fee and the fee over the life of the permit, to make this determination. Document the rationale for any tradeoff between the fee to the Government and technical merit.

Evaluation of Applications

To be considered for issuance of a permit, applications must be received on time. Applications will be considered late if received after the due date specified in the prospectus, unless late receipt is due solely to mishandling by the FS. If only one application is received and it is late, the FS has the discretion to accept it.

Rating forms may be developed for the evaluation process. Ratings should be consistently applied to elements of applications and among applications, to ensure a thorough and fair evaluation. Each evaluation team member must support the ratings assigned with a concise narrative addressing strengths and weaknesses in the application. (A sample rating form is included in Appendix 4A, pages 4-6–4-9.)

The evaluation must primarily be based on the information in the application submitted to the FS. Information may be obtained from other sources, if the use of such information is part of the normal evaluation process or if the applicants are notified of such use. If outside information—references,

for example—is used to evaluate one application, it must be used to evaluate all of them.

Technical components of applications, such as the operating plan, require

- ☐ Documentation of the basis for evaluation.
- ☐ An analysis of what is acceptable and unacceptable, including an assessment of each applicant's ability to accomplish the technical requirements.
- ☐ A summary or matrix of the ratings.
- ☐ A summary of findings.

The FS will establish a minimum permit fee in the prospectus as a flat dollar amount. The minimum fee will establish a floor for the fee proposed by applicants. Although the permit fee will be proposed as a percentage of gross revenue, that percentage should equate to a value that at least equals the minimum fee.

Before deciding which application to accept, evaluate the proposed fee to the Government separately from technical merit. Examine the proposed fee to determine what the Government will likely receive. Evaluate the percentage of gross revenue proposed in light of the projected net revenue for the concession submitted by the applicant in the applicant's forecast of concessionaire income and expenses. Determine whether the revenue and expense projections are realistic. In addition, assess whether visitation and other assumptions are accurate and reasonable, and whether the proposed fee equals or exceeds the minimum fee.

Whenever all or most of the applicants propose a fee that is less than the minimum, the FS should ask all those applicants why they believe the minimum fee is higher than fair market value. If these discussions convince the FS that its estimate is too high, the FS should withdraw the prospectus, establish a new minimum fee, and issue a new prospectus, if the FS believes the concession is still viable in light of the new minimum fee.

If only one applicant responds to the prospectus, the proposed AOP provisions for the concession may be negotiated with the applicant. If no applicants respond to the prospectus, reevaluate

the concession opportunity. Consider whether the prospectus can and should be modified to make it attractive, and reissued; or whether the opportunity cannot be made viable, and should not be readvertised. If there are no applicants, inquiries may be made of potential applicants strictly as to why they did not apply.

Selection of an Applicant

Upon completion of the evaluation, the selecting official must decide whether to issue the permit without oral or written discussions. Issuing the permit based on initial applications is appropriate if it would produce the most advantageous result for the FS, and the prospectus includes a provision that reserves the FS's right to do so.

If any uncertainty exists concerning the technical or fee aspects of an application, the permit should not be issued without further discussion. "Discussion" includes any oral or written communication between the FS and an applicant that allows the applicant to revise or modify his/her application.

Do not issue a permit based on initial applications if discussions have been conducted with one or more applicants for any purpose other than clarification. "Clarification" means communication with an applicant for the sole purpose of eliminating minor irregularities, informalities, or clerical mistakes in the application. Under these circumstances, do not allow the applicant to modify his/her application.

Establishing a Competitive Range

When a permit should not be issued on the basis of initial applications, the selecting official must decide which potential applicants should be included in the competitive range, for the purpose of conducting written or oral discussions. The competitive range must be determined on the basis of the fee and other factors that were stated in the prospectus, and must include all applications that have a reasonable chance of being selected. The selecting official may limit the number included

in the competitive range to a number that allows proper evaluation.

Selecting officials have broad discretion in determining whether to place an application in the competitive range. However, the selecting official may not treat similarly situated applications differently. Do not exclude applicants from the competitive range on the basis of a predetermined cut-off score. Base inclusion or exclusion of a particular application on the array of scores obtained from applicants.

Exclusion is appropriate if the deficiencies are so material as to preclude any possibility of upgrading, except through major revisions or additions. Exclude applications that contain requirements or conditions that could not be met without detracting from technical acceptability.

Written or Oral Discussions

There is no need to conduct oral or written discussions with applicants outside the competitive range. Oral or written discussions should be conducted with all applicants in the competitive range whose applications contain technical deficiencies (parts of the application that do not satisfy the FS's minimum requirements). Ensure that discussions disclose only deficiencies. During discussions, point out all deficiencies in the applications, not just in selected areas.

Determine deficiencies only from evaluation of each application against the specific evaluation criteria established in the prospectus. Do not determine deficiencies in an application by comparison with competing applications. Do not disclose the strengths and weaknesses of, or any information from, competing applications. Unless an application is removed from the competitive range after uncertainties are resolved, allow an applicant to revise his/her initial application.

After written or oral discussions have been conducted, solicit best and final applications. Invite all applicants in the competitive range, including those with whom no discussions were held, to submit a best and final application. The request for best and final applications must include

- ☐ A statement that discussions are concluded.
- ☐ A statement that best and final applications should be submitted.
- ☐ A due date and time that give a reasonable opportunity for submission of best and final applications.
- ☐ A statement that if any modification is submitted, it must be received by the date and time specified.

If there is any additional discussion with an applicant after the submission of best and final applications and before issuance of a permit, there must be additional discussions with all applicants remaining in the competitive range, and another round of best and final applications. Do not discuss deficiencies remaining from the initial applications if the applicant has already been informed of the deficiencies.

Issuance of a Permit

Issuance of a permit must be made on a rational basis, in accordance with the evaluation criteria and procedures included in the prospectus. Do not alter the relative importance of the criteria in the prospectus without amending and reissuing the prospectus, as discussed in Chapter 3. Issuance of a permit as a result of a tradeoff between the fee and technical merit must be supported by the established criteria, and justified in writing.

All applicants should receive a letter notifying them of the selection decision and their appeal rights under 36 CFR Part 251, Subpart C. The letter to the selected applicant should contain all the requirements that must be met before a permit is issued. (Appendices 4B and 4C, on pages 4–10-12, contain sample notification letters.) In addition, provide the following documents to the selected applicant:

- ☐ Garbage and Toilet Pumping Standards.
- ☐ Form FS-1300-5, "Customer Service Comment Card."
- ☐ Daily Use and Fee Collection Form.

Follow-Up

Furnish the basis for the selection decision to any unsuccessful applicant who requests it in writing. Include the FS's evaluation of significant deficiencies in the requester's application. Do not make comparisons with other applications or reveal the evaluation scoring. Return unsuccessful applications after the appeal period has expired.

FOIA Requests

The following is a summary of general legal principles applicable to requests for information from applications, either selected or unsuccessful, under the Freedom of Information Act (FOIA). Determinations of whether to release requested information depend on the circumstances of each situation. Consult with the local Office of the General Counsel (OGC) and the local FOIA coordinator in the event information from applications is requested. See FSM 6270 and FSH 6209.13 on FOIA and the Privacy Act for additional information.

Do not guarantee in the prospectus or otherwise the confidentiality of information submitted in applications. State that this information may be kept confidential only to the extent permitted under applicable law, i.e., FOIA and the Privacy Act.

Information submitted in response to a prospectus may be withheld if it qualifies as confidential business information under exemption (b)(4) of FOIA. Financial statements would probably qualify under exemption (b)(4).

However, information that qualifies under exemption (b)(4) must be released if the information becomes part of the public record, e.g., by being

attached to the permit issued to the selected applicant. For example, information contained in an operating plan attached to a permit does not qualify as confidential business information under exemption (b)(4), because the operating plan and permit are public documents.

Information may also be withheld under exemption (b)(5) of FOIA if it is involved in the FS's deliberative process. To justify use of exemption (b)(5), it must be shown that release of the information would harm the FS's ability to make a decision based on that information. This justification is also necessary to meet the Attorney General's foreseeable-harm policy on exemption (b)(5). (This policy is inapplicable to exemption (b)(4) concerning release of confidential business information.)

A request for evaluation scores and ratings before or after a decision is made to issue a permit would probably qualify under exemption (b)(5). As a general rule, the application evaluation process should be protected from disclosure before, during, and after the evaluation, to maintain the integrity of the process.

If a decision is made to release information submitted in an application, applicable regulations require the FS to give the submitter prior notice and an opportunity to respond. Consult with the local OGC on the regulations and procedures to follow.

Appeals

A decision to issue a permit through issuance of a prospectus is subject to the agency's administrative-appeal procedures at 36 CFR Part 251, Subpart C. Do not issue a permit until all prerequisites for the permit have been met and the appeal period (and if an appeal is filed, the appeal itself) have concluded.

If a bid protest is filed with the General Accounting Office involving issuance of an FS campground concession permit, the affected Forest should immediately notify the Recreation, Heritage, and Wilderness Resources Management staff in Washington.

Prerequisites to Issuance of a Permit

The prerequisites to issuance of a permit discussed in Chapter 3 must be met by the selected applicant. If not, the applicant that receives the next highest rating should be selected, subject to a financial-ability determination (FAD) and the prerequisites to permit issuance.

Chapter 5

Permit Fees and G-T Fee Offset

This chapter discusses establishing the permit fee, G-T fee offset, and permit fee payments.

Establishing the Permit Fee

Permit fees charged under Section 7 of the G-T Act have two components: the value of the use of Federal improvements, and the value of the use of Federal land. (See FSM 2715.13 and FSH 2709.11.) A permit fee should be calculated based on all land and improvements under permit, even sites that do not qualify for charging use fees under the Land and Water Conservation Fund Act.

The permit fee will be determined by competition: applicants will propose the fee to the Government as a percentage of gross revenue. The FS will evaluate that percentage in light of the projected net revenue for the concession, submitted by the applicant in the applicant's forecast of concessionaire income and expenses.

The FS will establish a minimum fee in the prospectus in the Evaluation Criteria section and in FS-2700-4h, clause IV.A. The minimum fee will be stated as a dollar amount in both the prospectus and the permit. The minimum fee will establish a floor for the fee proposed by applicants, and for the permit fee paid by the holder. Although the permit fee will be proposed as a percentage of gross revenue, that percentage should equate to a value that at least equals the minimum fee, and the concessionaire will not pay a permit fee less than the stated minimum. For fee calculation purposes, "gross revenue" is defined in FS-2700-4h, clause IV.B.

The following describes the process and rationale for establishing the minimum fee.

The FS is required by law to obtain fair market value for the use of land and improvements under FS administrative control. Current fee policy is contained in FSM 2715 and 2720. FSM 2721.41 provides that FSH 2709.11, Chapter 30, should be used to compute fees for uses that involve primarily camping and picnicking (whether the facilities were developed by the FS or by non-Federal entities).

Several methods for determining fair market value are discussed in FSH 2709.11, section 31.1. These include appraisal, income, schedules, competition, and negotiation. Three methods are proposed for establishing a minimum fee for G-T campground concessions.

Establishing a Minimum Fee Based on Appraisal

Appraisal is the most professional and defensible, although the most expensive, method of valuation. See Chapter 5 of the *PPV Desk Guide*, "Step 2: Determining Whether a Formal Appraisal is Needed," for a discussion of appraisals. If available, appraisals should be used to establish the minimum fee for the use of the land and improvements. The capitalization rate, or percentage applied to the appraised value to determine the permit fee, should be based on current market data.

If current market data are unavailable, Office of Management and Budget Circular A-25, which implements Federal statutory authority for charging fees, provides that the 30-year Treasury rate, also known as the long-term bond rate, may serve as the capitalization rate. As of July 1, 1997, the 30-year Treasury rate was approximately 6.78 percent. Check the current rate at the time of fee determination. Examples of minimum fee calculations follow.

Fee Component for the Use of Government Land

Acres of land to be permitted = 27

Appraisal value of land = \$3,000 per acre

30-year Treasury rate = 6.78 percent

Fee = value of land times Treasury rate

Fee = $27 \times \$3,000 \times .0678 = \$5,492$

Fee Component for the Use of Government Improvements

One approach to valuation is replacement cost less all forms of depreciation:

Replacement cost = \$1,000,000

Depreciation = 80 percent
= $\$1,000,000 \times .80$
= \$800,000

Current value = \$1,000,000
\$800,000
= \$200,000

Fee = value of improvements times Treasury rate

Fee = $\$200,000 \times 0.0678 = \$13,560$

Combined fee

Combine the components for the use of the land and the use of improvements to obtain the minimum fee: $\$5,492 + \$13,560 = \$19,052$.

Establishing a Minimum Fee Based on Gross Receipts

Basing recreation concession fees on a percentage of gross receipts is a common practice for Federal as well as state agencies. If appraisals are unavailable, the minimum fee may be based on the three-year average of gross receipts times the current 30-year Treasury rate, as shown below.

| <u>Year</u> | <u>Gross receipts</u> |
|-------------|-----------------------|
| 1994 | \$120,500 |
| 1995 | \$125,600 |
| 1996 | \$130,300 |

Average = $\$376,400 \div 3 = \$125,467 \times .0678 = 8,506.66$.

Establishing a Minimum Fee Based on a Schedule

An alternative to using the average of gross receipts times the 30-year Treasury rate is to develop a regional or market area schedule of minimum fees, based on capitalization rates for comparable concessions on land managed by the FS, other Governmental entities, and the private sector.

G-T Fee Offset

Once the permit fee is calculated, it may be offset in whole or in part by the value of Government M&R, as defined in FS-2700-4h, that is performed at the holder's expense. The permit defines "maintenance," "reconditioning," "holder maintenance or reconditioning," and "Government maintenance or reconditioning" as follows:

Maintenance is preserving; keeping in proper condition; or rebuilding, repairing, or replacing. Maintenance does not include construction of new facilities.

Reconditioning is restoring a facility to its original condition, or to meet current national or state standards, such as UFAS, ADMG, the Uniform Building Code, or state water quality standards. Reconditioning does not include construction of new facilities.

Holder maintenance or reconditioning is maintenance or reconditioning that NEITHER MATERIALLY ADDS TO THE VALUE OF THE PROPERTY NOR APPRECIABLY PROLONGS ITS LIFE. The work serves only to keep the facility in an ordinary, efficient operating condition. From an accounting or tax perspective, it is work that may be expensed, but not capitalized.

Examples include but are not limited to interior decorating, interior painting, vandalism repair, repair of broken windows, light bulb replacement, cleaning, unplugging drains, drivebelt replacement, preventive maintenance, lubrication of motors, greasing, servicing, inspecting, oiling, adjusting, tightening, aligning, watering, weeding, sweeping, waxing, refinishing picnic tables, routine housekeeping, and general snow removal.

In fulfilling these responsibilities, the holder shall obtain any licenses and certified inspections required by regulatory agencies, and follow state and local laws, regulations, and ordinances and industry standards or codes applicable to the permitted operation.

Government maintenance or reconditioning is maintenance or reconditioning that ARRESTS DETERIORATION AND APPRECIABLY PROLONGS THE LIFE OF THE PROPERTY. From an accounting or tax standpoint, the expenditures may be capitalized.

Examples include but are not limited to installing a new roof, new floor, or new siding; rebuilding boilers; replacing pipes, pumps, and motors; repairing or maintaining the paths, lands, walks, walls or landscaping adjacent to other Government-owned structures; and performing exterior painting and refinishing. Exterior painting that repairs unsightly visual marks caused by everyday use does not meet the definition outlined above.

Government maintenance or reconditioning, whether performed by the holder or the FS, is at the sole discretion of the authorized officer.

(Appendix 5A, pages 5 - 6-7, contains a sample list of Government M&R projects.)

Alteration of Government Improvements during M&R

Any materials, equipment, or fixtures made a part of existing Government improvements during holder or Government M&R become the property of the United States (see FS-2700-4h, clause II.E). However, it is unlawful for the FS to accept construction of new facilities by the holder, just as it is inappropriate to use the cost of new construction to offset the permit fee.

If approved, new facilities built by the holder would be owned by the holder, and therefore could not be included

in the opportunity advertised in the prospectus. If these new facilities are an integral part of the operations, it could be difficult to attract applicants, thereby reducing competition for the concession. If new construction is needed at the site and FS funding is not available, consider including the site in PPV.

G-T Fee Offset Agreement and Certification

Before issuance of the permit and before each succeeding operating season, the FS and the concessionaire should enter into an annual G-T fee offset agreement that includes the list of Government M&R projects and their estimated cost developed by the FS and included in the prospectus. The agreement should enumerate the portion of the fee that will be offset by Government M&R and should specify which projects are to be used for offset that year. The agreement should also specify whether the concessionaire will be required or has the option to enter into a collection agreement with the FS to perform the work. (The G-T fee offset agreement should not be confused with the holder M&R plan referenced in Chapter 3, which lists projects that are not eligible for fee offset.)

The following is a list of additional provisions that must be included in any G-T fee offset agreement under which the holder will perform some or all of the work:

- ☐ Standards for completion of the projects.
- ☐ Examples of allowable costs, such as salaries and wages, travel, vehicles and equipment, materials and supplies, subcontracts, and overhead directly associated with a G-T fee offset project.
- ☐ A statement that upon a determination by the FS that a project has been satisfactorily completed, the holder must submit documentation of its actual cost to the FS and must certify that the representations in the documentation are accurate and complete.
- ☐ A statement that the certification must be signed and dated, and must state that failure to sign the certification will vitiate the fee offset claim.

- ☐ A statement that the FS will verify the documentation before giving any fee offset credit.
- ☐ A statement that the FS reserves the right not to grant any fee offset if any of the representations in the documentation are inaccurate or incomplete.

The G-T fee offset agreement should become a part of the permit. Appendix 5B, pages 5- 8-9, contains a sample G-T fee offset agreement.

Claims for fee offset must be documented using FS-2700- __, “Granger-Thye Fee Offset Certification Form.” This form requires the holder to itemize and document allowable costs directly associated with each G-T fee offset project and to certify as to the accuracy and completeness of the representations in the documentation supporting the fee offset claim. The certification form is subject to all the provisions in the fee offset agreement executed by the FS and the holder. Appendix 5C, pages 5-10-11, contains a sample certification form.

Long-Term Government M&R

The FS must plan for replacement of its capital improvements. An M&R plan should be developed estimating the year for replacement of various components. If the cost of a project exceeds the amount of the permit fee eligible for offset in a given year, establish a modified fee schedule for accelerated G-T fee offset work.

Establishing a modified fee schedule for accelerated G-T fee offset work allows enough funds to be collected in the first year of operations to complete a large project. Establish the fee schedule so that there is a large fee payment the first year and a smaller fee paid in subsequent years. For example, the minimum fair-market-value fee is \$10,000 per year, and the permit term is five years. Develop a fee schedule that requires an initial annual payment of \$30,000 and four subsequent annual payments of \$5,000 per year. The larger payment must be made in advance, not in arrears.

Include the modified fee schedule as a separate evaluation criterion. (See Evaluation Criterion 7 in Chapter 3, page 3-5.)

The cost of the project should be documented in the G-T fee offset agreement. Either the holder may perform the work, or the FS may perform the work under a collection agreement. If the FS performs the work, the funds should be deposited into a cooperative work account (FS accounting code CWFS), and expended each year in the following year.

2. FS Performs Work under Collection Agreement

This second alternative allows the FS to obligate enough funds to complete a large project by the end of the permit term. When the FS anticipates that a Government M&R project will extend beyond the current fiscal year, the FS may require that permit fees be paid into a cooperative work account (FS accounting code CWFS) under a binding collection agreement, in order for the FS to perform the work. To use the funds for financing long-term Government M&R, the specific project and its cost must be obligated each fiscal year for the next fiscal year in the G-T fee offset agreement (unobligated funds go to the Treasury at the end of each fiscal year).

Offset for Concessions Involving Multiple Sites

All or part of the permit fee may be offset by the value of eligible MAR performed on the land and improvements authorized under a G-T permit. Thus, if multiple sites are authorized under one permit, the value of Government M&R performed at any site under the permit—even those that generate very little of the permit fee—may be used as offset. However, where multiple sites are authorized under more than one permit, each permit fee may be offset only by the cost of Government M&R performed at sites under the corresponding permit.

Collection Agreements for G-T Fee Offset Projects

Collection agreements may be used for G-T fee offset projects, i.e., the concessionaire may enter into an agreement with the FS to pay the FS to

perform Government M&R on the land and improvements covered by the permit, and the value of that work may be used to offset the permit fee. Collection agreements for G-T fee offset projects may be either optional or required. The FS may require concessionaires at their expense to recondition and maintain the land and improvements covered by the permit. The FS has the discretion to determine how that authority will be implemented, including requiring the concessionaire to deposit money under a collection agreement for Government M&R performed by the FS.

The amount deposited in a given year under a collection agreement for G-T fee offset work should not exceed the permit fee for that year. Therefore, avoid entering into collection agreements for Government M&R predicated on a certain level of concession revenue (i.e., agreements that the concessionaire will pay the FS 50 percent of all concession revenue over \$100,000 for Government M&R performed by the FS). In addition, collection agreements for Government M&R predicated on a certain level of concession revenue may result in assessment of an inappropriate permit fee. Fees for G-T permits must be based on the value of the use of land and improvements under permit, rather than on a percentage of revenue over a certain threshold.

Chapter 6 discusses in more detail the legal parameters that apply to the use of collection agreements.

Permit Fee Payments

Permit fees should be paid in accordance with requirements in the permit and agency fiscal policy. These include:

- ☐ Payment in advance of the authorized use.
- ☐ Prompt reimbursement (as required by applicable law).

Payment should be required without demand. The payment schedule must be included in the

permit (see FS-2700-4e, clause IV.C). Follow the schedule below for permit fee payments. Where the estimated annual fee is \$2,500 or less, all of the permit fee should be paid in advance of the operating season. Where the estimated annual fee is more than \$2,500, a portion of the fee should be paid in advance of the operating season, and the remainder over the course of the operating season.

| <u>Estimated Annual Fee</u> | <u># of Payments</u> | <u>Frequency</u> |
|-----------------------------|----------------------|---|
| Through \$2,500 | 1 | Prior to opening |
| \$2,501 - \$10,000 | 3 | Prior to opening, at End of first 30 days, And at mid-season. |
| Over \$10,000 | Variable | Prior to opening and every 30 days through operating season. |
| <input type="checkbox"/> | | |

Advance and interim permit fee payments should be kept in a suspense account. The holder must be reimbursed for these fee payments up to the amount of any offset claims approved by the FS during the operating season. The FS must reimburse the holder within 30 days of approval of an offset claim, unless the holder asks the FS to hold the funds and apply them to the next fee payment.

At the end of the operating season, determine the final fee by reconciling fee payments as necessary against actual concession revenue reported by the holder, in accordance with FS-2700-4h, clause IV.D, and offset claims approved by the FS. (Appendix 8A contains a standard form for the collection of use and revenue data. Concessionaires may use this form or provide the same data in an alternate format.)

Any excess of the final fee over the value of offset claims approved by the FS should be returned to the Treasury. Funds in a suspense account may not be obligated for future years.

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| Chapter 6 |
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| Technical Issues |
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This chapter addresses the following technical subjects:

- ☐ Insurance.
- ☐ Bonding.
- ☐ Collection Agreements.

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| Insurance |
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By law and policy, the holder of a special-use permit must indemnify the United States for any losses incurred by the United States associated with the holder's use and occupancy. Generally, the holder is required to obtain insurance to cover these losses. Requirements vary, depending on the type of insurance, regional specifications, and the type of use and occupancy authorized by the permit.

The two main types of insurance are liability insurance and casualty insurance. Liability insurance covers losses arising from injury to persons and damage to third-party property, i.e., property other than that of the insured and additional insured. Casualty insurance covers losses arising from damage to personal and real property owned by the insured and additional insured. The FS must ensure that insurance coverage is adequate before issuing a permit.

Master Policy Review

The national master policy list is maintained by the Gifford Pinchot National Forest in Region 6. The master policy list consists of liability insurance policies that have been approved by the FS for national use (casualty insurance policies are not included on the master policy list at this time). Each of these policies is assigned a national policy

number, which should appear on the certificate of insurance issued for that policy. Even if a policy is on the master policy list, the policy should be checked for endorsements and exclusions that may reduce or eliminate coverage required for the use and occupancy authorized by the permit. Policies that are not on the master policy list require more detailed review. Consider obtaining local OGC review if the insured use and occupancy has a significant degree of risk, or the insured property has appreciable value.

A good tool for reviewing liability insurance policies is the Region 5 *Liability Insurance Companion*, prepared by the agency's Pacific Southwest Region in January 1990. Check for the following in reviewing an insurance policy.

- ☐ The United States should be named as an additional insured, and the additional-insured provision should provide for the required amount and type of insurance coverage for the United States.
- ☐ The policy should have a master policy number.
- ☐ The policy and the permit should be issued to the same person.
- ☐ All activities authorized by the permit should be covered by the policy. Exclusions and endorsements are common, and need to be checked by someone who understands the holder's operation.
- ☐ The area covered by the policy should match the permitted area.
- ☐ The policy period should cover the entire operating season.
- ☐ The policy should meet Regional and national requirements. Authorized officers may set higher coverage limits, depending on the

nature of the authorized activity and the degree of attendant risk.

- ☐ The policy should require 30 days' prior written notice of cancellation (other than for nonpayment of premiums, which should require 10 days' prior written notice).
- ☐ The policy should be an occurrence policy, rather than a claims-made one. Under an occurrence policy, a claim can be made after the policy period has expired, as long as the loss occurred while the policy was in effect. Under a claims-made policy, a claim must be made while the policy is in effect. Claims-made policies are unacceptable unless they have an extended reporting period. Check Section V of the policy to see if the insured has at least 60 days to report claims after the policy has expired.
- ☐ A violation of a warranty in the policy should not void coverage.
- ☐ If claims are reduced by the cost of defending them, coverage should be increased commensurately.

Liability Insurance

Permit Clause 111.1.1 of FS-2700-4h requires the holder to obtain liability insurance for any losses arising out of the holder's use and occupancy of National Forest System lands. See also FSM 2713.32 and 2721.41.

Under FSM 2713.32, the minimum amount of liability insurance coverage is \$100,000 for injury or death to one person, and \$200,000 for injury or death to two or more people. Check for any Regional supplements that may have increased these amounts. If there is a need, higher limits may be required. The actual amount of liability coverage should be determined by the authorized officer, and in many cases may be significantly higher than the minimum requirements in national policy. In exercising that discretion, the authorized officer should consider:

- ☐ The level of inherent risk associated with the use and occupancy.
- ☐ The potential for an incident that may cause injury or death arising out of the use and occupancy.
- ☐ If such an incident were to occur, the potential for injury or death to only one person, versus the potential for injury or death to more than one person.

Examples of accidents at concession campgrounds could include trees felled by wind damaging automobiles or killing people; a swimmer attacked by an alligator at a developed swim area; and a bear attack at a concession site. In cases involving death, multimillion-dollar claims are not uncommon.

Casualty Insurance

Permit Clause 111.1.2 of FS-2700-4h requires casualty insurance for Government property covered by the permit, including the land and Government-owned improvements. The types of loss to be covered include but are not limited to fire suppression costs, damage (including vandalism) to Government-owned improvements covered by the permit, and to the extent provided in clause III.I.2, costs associated with the release or threatened release of hazardous material.

To ensure the rapid repair or replacement of essential visitor facilities, the holder will normally need to purchase either full-replacement or current-value coverage. Full-replacement coverage pays up to the dollar limit in the policy for the cost to restore or replace the damaged or destroyed property, without deduction for physical depreciation. Current-value coverage pays up to the dollar limit in the policy for the current value of the damaged or destroyed property, taking into account physical depreciation.

Full-replacement coverage provides the greatest protection to the Government and the public for repair or replacement of needed facilities. However, full-replacement coverage may be expensive. Review the concession feasibility analysis (or concession revenue, for existing concessions) to determine whether the concession income can support full-replacement coverage. Current-value coverage may be an acceptable alternative, depending on the circumstances. In the event of

catastrophic loss, the site will be evaluated for rebuilding. (See FS-2700-4h, Clause III.E.)

To determine an appropriate amount of coverage, evaluate which facilities are essential to the concession, and the risk of damage to multiple improvements, such as toilet and shower buildings. Determine replacement values for essential improvements. Document the basis of property damage insurance, and attach a list of facilities and their replacement values to the permit.

Historic structures may be prohibitive in cost to reconstruct in kind. Insurance premiums may exceed what could reasonably be expected to be paid by the holder. In some cases, it may be best to replace an historic structure with a modern building, which can accommodate the functions and capacity of the original structure.

The minimum amount of casualty insurance coverage should be the value of the most expensive building at the site. The authorized officer should require a higher amount where there is a high risk of loss associated with the use and occupancy that could exceed **the minimum**.

Combined-Single-Limit Policies

Many liability insurance policies offer coverage that does not have separate limits for personal injury or death to one person, personal injury or death to more than one person, and third-party property damage. Rather, all three types of loss in the aggregate are subject to a single limit. A claim of up to that limit can be made for either type of loss, or both types of loss combined. The insurance provided by such policies is known as combined-single-limit (CSL) coverage.

For CSL policies, the minimum amount of coverage should equal the amount of coverage desired for personal injury or death to more than one person plus the amount desired for third-party property damage. Evaluate the risk associated with both types of loss, and establish an amount of coverage that is adequate for both. Thus if \$200,000 is desired for personal injury or death to more than one person and \$100,000 is desired for third-party property damage, the CSL minimum should be \$300,000.

Insurance for Multiple Permits

If the holder is using one policy to insure more than one permit, add a rider that lists each site and that states that each site is covered up to the dollar limits in the policy.

Insurance for Permits Issued to States

If the prospective holder is a state or one of its political subdivisions, a risk assessment and insurance policy may be required if the state or its political subdivision has statutory or constitutional authorities limiting its liability or obligation to indemnify. See the user notes for Clause III.I in FS-2700-4h.

Insurance for Permits Issued to Federal Agencies

If the prospective holder is a Federal agency, insurance is not required. Substitute language should be used that addresses limitations imposed by Federal law on assumption of liability by a Federal agency under the permit. See the user notes for Clause III.I in FS-2700-4h.

Administering Insurance Coverage

Adequate insurance coverage is a prerequisite to permit issuance; Within 30 days of the selection decision, the selected applicant must provide a copy of the insurance policy for the use and occupancy to be authorized under the permit to the FS for review.

If the policy is included in the master policy list, it has been reviewed by the FS, and a quick comparison can be made with the master policy to check for any exclusions or endorsements that might affect required coverage. If the policy is not included in the master policy list, review the policy in detail, to ensure that it affords the required coverage.

Proceeds recovered by the United States under liability insurance policies must be deposited into the Treasury as miscellaneous receipts. For casualty insurance policies, the FS has the discretion either to require the concessionaire to use all proceeds recovered to repair, rebuild,

restore, or replace damaged Government property covered by the policy, or to obtain payment of the proceeds from the concessionaire or the insurance company. (See FS-2700-4h, Clause 111.1.2.) Casualty insurance proceeds paid to the FS must be deposited into the Treasury as miscellaneous receipts, rather than spent at the site to rectify the damage.

Bonding

In the context of the agency's concession program, bonding is a type of guarantee that protects the United States against financial loss resulting from defaulted obligations associated with special-use permits. A bond ensures obligations or payments associated with these permits.

Do not use bonds to enforce general terms of the permit. Rather, use bonds to enforce readily identifiable requirements that are specified in FS-2700-4h, Clause J. Also, do not use bonds as a substitute for enforcement action under the permit, such as suspension or revocation. Bonding should not be necessary for permit fee requirements, as permit fees should be paid in advance of the authorized use and occupancy. Bonding is particularly appropriate to protect the United States from a complete default under the permit. (See FSM 2344.2, item 4; FSM 2713.34; and FSH 6509.11k, Chapter 80, for direction on the use of bonding.)

The agency has the discretion to require bonding. If it is required, it should be addressed in the prospectus. The amount of the bond should be sufficient to cover the anticipated loss. For example, the bond may be based on the cost of operating the sites for the remainder of a season, the cost for a new holder to start operating, the amount of cash on hand required by the FAD, or the amount of services that the holder is committed to provide, based on reservations. If multiple permits are covered by a blanket bond (see FSH 6509.11 k, sec. 81.2), the amount of the bond should be sufficient to cover the anticipated loss under all permits covered by the bond.

mine whether bonding should be required, and, if so, an appropriate amount. It is the agency's option to require bonding; however, it should be addressed in the prospectus. After a satisfactory operating season, the authorized officer may reevaluate the need for, or reduce the amount of, the bond.

The bond should provide that at the agency's option, the surety must pay the United States for any loss covered by the bond, or, in the event of revocation or suspension of the permit or complete default under the permit, must pay a third party (NOT THE FS) to operate the concession. **ANY BOND PROCEEDS RECOVERED BY THE FS MUST BE DEPOSITED INTO THE TREASURY AS MISCELLANEOUS RECEIPTS. THE FS MAY NOT USE BOND PROCEEDS TO OPERATE THE SITE.**

The bond should also provide that selection of a third party to operate the site is subject to FS approval. Upon approval, the FS would issue a temporary permit to the third party to operate the concession for a period up to the balance of the permit term. After a new holder is in place, the operational costs of the concession will be covered by concession revenues. In addition, the new holder will be responsible for all obligations under the permit. Once the permit term expires, a new prospectus must be issued for the concession (see FS-2700-4h, Clause J).

Type of Bond

A performance bond may be required to secure obligations imposed under the permit, in accordance with FS-27004h, Clause J. Either the FS will develop a performance bond form for special uses or adapt General Services Administration (GSA) Form SF-25, Performance Bond (see Appendix 6A, page 6-7). (Although GSA Form SF-25 is approved for use for special-use permits, before it can be used in conjunction with this desk guide, the FS must obtain approval from GSA to modify the form to make it consistent with that use, and to allow the FS to require the surety to pay a third party to operate the concession in the event of a complete default.) The term of the bond should cover the period needed to secure obligations under the permit, which typically would be the length of the permit term.

Review the economic-feasibility analysis to deter-

Forms of Bonding

Bonds may take the form of corporate surety, U.S. Treasury bills, notes, bonds or other negotiable securities, cash deposits, irrevocable letters of credit, assignment of savings accounts, or assignment of certificates of deposit. See FSH 6509.11k, Chapter 82, for direction on requiring and administering bonds.

Collection Agreements

Under certain criteria, the FS may enter into agreements to accept funds and other types of contributions from non-Federal sources, to finance FS activities. When specific requirements of statutory authorities are met, the FS may enter into agreements whereby the FS deposits funds into a trust account as advances or accepts funds as reimbursements, rather than depositing funds into the Treasury as miscellaneous receipts, as required by 16 U.S.C. 498. This type of agreement is known as a collection agreement. A collection agreement is a type of cooperative agreement.

There are several authorities for collection agreements, including the Cooperative Funds Act of 1914, 16 U.S.C. 498, and Section 5 of the G-T Act, 16 U.S.C. 572. Section 5(b) of the G-T Act is the appropriate authority for collection agreements between permit holders and the FS. Section 5(b) of the G-T Act and FSM 1584.12 establish the legal parameters that apply to collection agreements between the FS and permit holders.

Section 5(b) of the G-T Act, 16 U.S.C. 572(b), authorizes collection agreements for work performed in connection with the occupancy or use of National Forest System lands. Under the agency's special-use program, a collection agreement under section 5(b) typically would be executed in connection with a permit. Consult with the local grants-and-agreements staff and OGC if a collection agreement outside the context of a permit relationship is contemplated.

Under collection agreements authorized under section 5(b), the permit holder deposits in one or more payments a sufficient amount to cover the total estimated cost of work, or reimburses the FS

for moneys spent from appropriated funds. The work must be done for the benefit of the permit holder (because Section 5(b) authorizes the collection agreement in the context of the use and occupancy authorized by the permit), and the work must benefit the public interest. In addition, the work must be for administration, protection, improvement, reforestation, and other kinds of work that the FS is authorized to do on National Forest System lands. The work must be performed in connection with the use and occupancy of National Forest System lands authorized under the permit, i.e., the work must be done on the land and improvements authorized under the permit.

Although the principal reason for these collection agreements is the holder's desire to have work done on land under the permit, there must be some public benefit, even though indirect, from accomplishment of the work. The FS cannot do work for the holder merely as a matter of accommodation, or because the FS is better equipped, or can do the work at lower cost.

Under FSM 1584.12a, item 2, agreements should not be initiated solely for the benefit of the holder or the FS, i.e., to supplement the use of FS crews or equipment not otherwise justified on a full-time basis for normal FS activities. Thus, collection agreements that in effect fund an FS employee's position or an FS program are inappropriate. In other words, collection agreements are improper if, but for the collection agreements, the FS employee's position or the FS program would not be funded or would not be fully funded.

It is not lawful for the FS to enter into collection agreements for nearly every aspect of the campground concession operation. Section 5(b) of the G-T Act contemplates that the collection agreement is ancillary to the permit, rather than vice versa. If collection agreements are used for most or all of the work that is the holder's as well as the Government's responsibility, they defeat congressional intent in authorizing the FS to issue permits for concessions under Section 7 of the G-T Act.

Thus collection agreements should not be used to cover the costs of ordinary operational aspects of the concession. Examples of such ordinary aspects include holder M&R, fee collection, and required or optional interpretive services that are offered on a routine or frequent basis. Generally,

collection agreements are inappropriate for services that the concessionaire must provide under the prospectus, the permit, and the AOP.

With the exception of collection agreements for G-T fee offset, which may be required as discussed in Chapter 5, collection agreements executed under Section 5 of G-T must be voluntary, because the statute contemplates a cooperative relationship between the parties. Since collection agreements other than for G-T fee offset must be voluntary, the willingness of applicants to enter into collection agreements should not be factored into the evaluation process. Otherwise, the incentive to enter into collection agreements will be so great as to make them, in effect, mandatory.

Ask two questions to start the analysis for determining whether collection agreements are appropriate: (1) Are the FS personnel or equipment being used under the collection agreements entirely funded by those agreements? and (2) Do the services provided by the FS under the collection agreements constitute a majority of the work required by the permit? If the answer is "Yes" to either question, do not enter into the collection agreements. If the answer to both questions is "No," conduct further analysis based on the foregoing discussion in its entirety.

G-T fee offset projects are a common example of work that may be covered by a collection agreement executed under Section 5 of the G-T Act. Examples of appropriate and inappropriate collection agreements for other activities follow.

- ☐ An example of an appropriate collection agreement for interpretive services would be an agreement whereby the FS receives funds to provide a special interpretive presentation

particularly within the agency's expertise as a minor part of the concessionaire's overall interpretive program (e.g., once or twice during the operating season where the program is offered five days a week).

- ☐ An example of an inappropriate collection agreement for interpretive services would be an agreement whereby the FS receives funds to provide ongoing or routine interpretive services at the concession, and in effect provides services that the concessionaire must furnish under the permit and AOP (e.g., conducting programs four days a week when the overall program is offered five days a week).
- ☐ An example of an appropriate collection agreement for maintenance services would be an agreement whereby the FS receives funds to provide specialized equipment, such as highway mowing, tree falling, or specialized cleaning equipment once or twice during the operating season.
- ☐ An example of an inappropriate collection agreement for maintenance or other services would be an agreement whereby the FS receives funds to provide ongoing maintenance or other services, such as toilet cleaning, fence building, or fee collection, and in effect provides services that the concessionaire must furnish under the permit and AOP.

See FSM 1584.12a, paragraph 8, for additional requirements applicable to collection agreements with permit holders. Appendix 6B (pages 6–8-9) contains a sample collection agreement. For further guidance, consult with the local grants and agreements staff, auditor, and OGC.

Chapter 7

Permit Administration

There are seven aspects of effective permit administration:

- ☐ Training.
- ☐ Orientation.
- ☐ Annual operating plan (AOP) review.
- ☐ Performance evaluations.
- ☐ Adverse actions.
- ☐ Claims against the holder.
- ☐ Health and safety inspections.

Training

FS concessions should be professionally managed and should meet the public's expectations. To achieve these goals, the FS requires competent and well-trained FS personnel administering special-use permits. At a minimum, permit administrators should have command of the laws, regulations, and agency policy governing special uses.

In addition, permit administrators should be competent in their verbal and written skills, and have the ability to negotiate and resolve conflict. The FS offers courses in both areas. Skills in accounting, business, and fee computation are also needed.

Orientation

The permit holder should also be familiar with laws, regulations, and agency policy governing special uses. Information can be provided through an orientation or informal contacts between the permit holder and the permit administrator. A joint walk-through of the concession sites is recommended, to familiarize the holder with the location and operation of facilities. The process should be

initiated early to ensure permit compliance and effective communication.

Permit and AOP Review

The permit and AOP establish the basis of performance evaluation. At the beginning of each operating season, these documents should be reviewed with the concessionaire; annual components, such as the G-T fee offset agreement, must be updated. Review reporting requirements. Timelines, such as due dates for submission of use data, should be specified in the AOP. A sample AOP will be developed and, when completed, will be included as an appendix to this chapter.

Performance Evaluations

The FS must monitor and evaluate the concessionaire's performance in accordance with requirements in the prospectus and permit, including any documents incorporated in the permit, such as the AOP and G-T fee offset agreement. Establish a formal evaluation process that measures achievement of public-service goals and compliance with the terms of the permit. In addition to formal evaluations, conduct ongoing monitoring and inspections, to the extent feasible. FSM 1950 contains additional guidance on permit administration.

An annual performance evaluation is essential because it will serve as the basis for extending the permit in accordance with the prospectus and permit, or allowing it to expire. In addition, an annual performance evaluation is important to

ensure compliance with the permit and documents attached to the permit.

National performance standards have been developed, and are incorporated in the Standard Performance Evaluation Form in Appendix 7A. These performance standards are based on Meaningful Measures. Additional standards may be added to the form, to address local needs or issues unique to a particular concession. Include these performance standards in the AOP. Evaluate the holder's performance under each standard, and the holder's overall performance, using three ratings: Good, Satisfactory, and Unsatisfactory.

In determining ratings, use the guidelines in the standard performance evaluation form. The overall rating should not give undue weight to matters of limited importance. If standards are assigned greater weight, that greater weight should be reflected in the overall rating.

The performance evaluation procedure must be provided to the concessionaire prior to an evaluation period, and the concessionaire should be notified prior to on-site evaluations. Generally, a mid-year and an annual performance evaluation should be performed. More frequent reviews may be necessary to achieve compliance with permit terms.

A mid-year evaluation should be conducted and written feedback provided on any deficiencies, so that the holder will have notice and an opportunity to correct them. The holder should be given a time frame for correcting deficiencies.

An annual performance evaluation should be conducted at the end of each operating season, and should address the status of deficiencies identified at mid-year. Written feedback should be provided on any deficiencies identified at mid-year and not remedied, and on any new deficiencies identified during the annual evaluation. If previously identified deficiencies have been corrected, so state. If deficiencies have been corrected, they may not serve as the basis for suspension or revocation of the permit.

Rate every holder at the end of the operating season. Give the holder a copy of the rating, and include notification of the holder's right to appeal.

Annual ratings of Unsatisfactory that are based in whole or in part on uncorrected deficiencies identified during the mid-year evaluation may serve as the basis for suspension or revocation of the permit.

Annual ratings are appealable under 36 CFR Part 251, Subpart C. If the permit will be revoked or suspended as a result of the annual rating, implement the revocation or suspension decision concurrently with the rating. Both the rating and the enforcement action based on it will then be appealable simultaneously.

Adverse Actions

Revocation and Suspension

Revocation is the cessation of a permit by action of an authorized officer before the end of the permit term, typically due to the holder's noncompliance with the terms of the permit. Suspension is a temporary revocation.

A permit may be revoked or suspended for noncompliance with applicable statutes, regulations, or terms of the permit. Noncompliance may be identified during performance evaluation or at any other time during the operating season. Regardless of when it is identified, noncompliance should be taken into account in the performance evaluation.

When noncompliance occurs, follow the direction at 36 CFR 251.60 and in FSM 2721.23. Refer to FSM 2716.3 for direction on revocation and suspension. As discussed in the preceding section, the holder must receive written notice of noncompliance and a reasonable opportunity to comply. Usually not more than 30 days is granted to correct noncompliance. Revocation and suspension require careful documentation and review by the local OGC. Revocation and suspension of a permit are subject to administrative appeal under 36 CFR Part 251, Subpart C. Appendix 7B contains a checklist for enforcement action. Appendix 7C contains a sample noncompliance letter.

Termination

Termination is cessation of a permit by its terms when a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. See FS-2700-4h, Clause VI.E. Examples include but are not limited to expiration of the permit by its terms on a specified date (FS-2700-4h, Clause I.C) and termination upon change of control of the business entity (FS-2700-4h, Clause I.H). Termination of a permit is not subject to appeal.

Claims against the Holder

Failure to pay permit fees is cause for revocation or suspension of the permit. Outstanding payments become claims by the United States against the holder. Interest, penalty, and administrative-cost provisions in FS-2700-4h, Clauses IV.F and IV.G, apply to all delinquent debts. Interest is assessed in accordance with the Debt Collection Act. Assess a minimum annual rate of interest on delinquent debts that is equal to the higher of the Treasury

current-value-of-funds rate or the prompt-payment interest rate in effect on the date the debt accrued.

The interest rate as initially assessed remains fixed for the duration of the period of debt. To determine the total due, add accrued interest and applicable penalties and administrative costs to the principal to be paid. Do not assess interest on interest, penalties, or administrative costs.

FSH 6509.11h, Chapter 20, and FS-2700-4h, Clauses IV.F and IV.G, contain additional guidance on late payments and administrative offset.

Health and Safety Inspections

Depending on the nature of the authorized activities and improvements under permit, there may be agencies other than the FS that will conduct safety inspections of various aspects of the concession, such as food service and boater safety. When such inspections are conducted, include the findings from them in the annual performance evaluation.

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| | Chapter 8 |
| | Operations Library |

This chapter includes references for various aspects of concession operations. Topics are organized in appendices as follows:

Appendix 8A, Use and Revenue Data

Appendix 8B, National Recreation Reservation Service (reserved)

Appendix 8C, Interpretive Services at Concession Campgrounds

Appendix 8D, Concessionaire Compliance with Labor Law

Appendix 8E, Law Enforcement at Concession Campgrounds

Appendix 8F, Customer Service Comment Cards