

CONCESSIONER REVIEW PROGRAM - CONTRACT/PERMIT COMPLIANCE

A. GENERAL

The purpose of the Contract/Permit Compliance Program is to determine a concessioner's adherence to the terms and conditions of its contract/permit and to identify specific responsibilities in administering concession authorizations on a day-to-day basis. The responsibility for the administration of concession contracts and permits rests with the Superintendent. The Superintendent or his/her authorized representative is to conduct contract/ permit compliance reviews of each concessioner once a year and is to formally notify the concessioner of those items needing improvement. It should be noted at this point that at the beginning of the year concessioners should be briefed on the requirements that they will be evaluated on and informed that they should pursue problem areas as they arise to avoid surprises at the time of the concessioner review.

B. REVIEW AND RATING PROCEDURES

* 1. Contracts and Permits*

In an effort to reduce the amount of paper used in the Concessioner Review Program, we have combined the actual rating form for contract/permit compliance with the contract/permit compliance checklist. The checklist should be used as a point of reference and guide to identify, document and evaluate those concessioner contract/permit elements which directly affect compliance. The actual compliance rating is located at the top of Form 10-630 and the Contract/Permit Compliance Checklist follows. If required for clarification, explanatory remarks may be entered within each section. Substantive comments which bear favorably or unfavorably on a concessioner's compliance must be entered in the narrative section of the Annual Overall Rating Report (Form 10-631).

Certain of the elements of contract/permit compliance have been labeled as "Special Attention Items." These items have been defined as those items which, if not carried out in accordance with the terms of the contract/permit, can cause the contract/permit to be terminated. There are six "Special Attention Items" in the contract/permit compliance checklist which have been identified with *a dagger (†)*. These items are:

1. Building and Improvement Program
2. Maintenance
3. Utilities
4. Accounting Records and Reports
5. Franchise Fee
6. Insurance

When reviewing the special attention items, careful attention should be given to such factors as length of time late, correspondence with the conces-

sioner in an attempt to correct the situation, uniform treatment of all concessioners, the concessioner's responsiveness and other mitigating circumstances.

After reviewing all elements of the checklist, the Superintendent then assigns an annual rating for the concessioner's contract/ permit compliance performance for the year, either "Satisfactory", "Marginal", or "Unsatisfactory."

If a concessioner has been in compliance with all or most elements of the checklist for the entire year, it should receive a "Satisfactory" rating.

The "Marginal" rating is provided to recognize situations which warrant strong action but have not yet reached the point where termination should be recommended.

If the concessioner has consistently failed to comply with any of the special attention items, or has consistently failed to comply with several of the other items, or if non-compliance with any one item has been so extensive and deliberate as to become a major issue, the rating should be "Unsatisfactory."

Samples of the forms needed to conduct contract/permit compliance evaluations under this program are provided in Exhibit 1 to this chapter and their use is explained in the following procedures. Should assistance be needed in completing these forms do not hesitate to contact your Regional Concessions Office.

*2. Limited Permits

Contract Compliance rating, procedures for Limited Concession Permits are described in Chapter 19, Paragaraph K.*

C. INSTRUCTIONS FOR COMPLETING COMPLIANCE FORMS

The following instructions correspond numerically to the applicable sections of the contract. Even though some of the sections do not require compliance, they have been included for numbering purposes only so that they follow the Standard Contract Language. The following instructions may also be used in reviewing a concessioner's compliance with a permit, but they do not coincide with the permit numbering system. Space has been provided at the end of the checklist so that the reviewer can note other requirements found in some permits that require compliance, such as, timely submission of use data, approval of advertising material, and items of an administrative nature that require compliance.

†1. Building And Improvement Program. (Item 1, of Checklist.)

If the contract requires a building and/or improvement program, review Section 1 of the contract and determine from your records if the concessioner is in compliance with the time frame requirements of that section and the

dollar amount of expenditures for improvements as defined in the contract (see item 5 below). Plans, drawings, and specifications must have been approved by the Service, and the starting and completion dates should have occurred within the stipulated time frames and documented. Any deviations from the building program requires formal amendment of the contract and must be supported by a written request from the concessioner stating reasons beyond its control warranting any relief of the contract requirements.

Such factors as the elapsed time, follow-up correspondence, the concessioner's responsiveness, and other mitigating circumstances should be considered.

(INFORMATION TO BE PROVIDED AT A LATER DATE ON ACCESSIBILITY OF FACILITIES TO HANDICAPPED INDIVIDUALS.)

If no building and improvement program is required, mark Form 10-630 (Item 1) "N/A". If the program has been completed mark the form "YES".

2. Accommodations, Facilities And Services. (Item 2, of Checklist.)

Services actually being provided should be checked against those authorized in the contract to ascertain that only authorized and required services are provided. Determine if additional accommodations, facilities and services are required. If the concessioner has a preferential right to provide additional accommodations, facilities and services, and such are required, comment on the concessioner's willingness to comply with its right or willingness to waive that right.

3. Plant, Personnel And Rates. (Item 3, of Checklist.)

Review the physical plant to determine whether it meets the needs for providing the authorized services. Personnel should be observed to determine (a) if there is an adequate number to provide satisfactory service, (b) if there is a need for some type of park-related or concessioner-related training program, and (c) if there is a need for some type of visual identification as concessioner employees.

Each concessioner who has 50 or more employees and (a) has a contract of \$50,000 or more; or (b) has Government bills of lading which in any 12-month

period, total or can reasonably be expected to total \$50,000 or more; or (c) serves as a depository of Government funds in any amount; or (d) is a financial institution which is an issuing and paying agent for U.S. savings bonds and saving notes in any amount, shall develop a written affirmative action compliance program for each of its establishments. Affirmative action plans should be developed by the concessioner within 120 days of the commencement of the contract. Upon execution of a contract/permit, and as part of the annual review of the operation, the Superintendent should determine if the concessioner has an applicable approved affirmative action plan. The affirmative action plan is to be filed by the concessioner with the Office of Federal Contract Compliance Programs (OFCCP), Department of Labor, and will be deemed to have been accepted by the Government at the time the appropriate OFCCP field, area, regional, or national office has accepted such plan or 45 days have elapsed and the Director of OFCCP has not disapproved such plan.

A check should be made to see if EEO posters are appropriately and prominently displayed at employment offices or other employee assembly points. These posters must be displayed where the contents will be conspicuous to all persons seeking use of the facility.

Rates are reviewed during the Concession Review Program to assure that they are the current rates approved by the Superintendent during the last rate review period. All rates approved by the Superintendent must be properly documented by supporting rate approval studies in accordance with the Rate Approval Program handbook.

The appropriate block on form 10-630 (Item 3) should be marked.

4. Government Land And Improvements. Not a Compliance item. Not included on checklist.

†5. Maintenance. (Item 4, of Checklist.)

Review any schedules of maintenance or maintenance plans and determine if the concessioner is providing required maintenance responsibilities to the satisfaction of the Secretary, including that on concessioner and government-owned buildings and assigned lands. If the establishment of a maintenance fund is required, the Superintendent should establish a method for monitoring it, and annually document for the record that the fund has been maintained and that expenditures are made on required maintenance projects. The Superintendent should also ascertain that all maintenance items identified by him have been adequately completed. If the concessioner is not satisfactorily carrying out its maintenance responsibilities, service to visitors will suffer and future expenditure by the Government, the concessioner, and/or its successor could be required unnecessarily.

6. Concessioner Improvements (Possessory Interest). (Item 5, of Checklist.)

Possessory interest is the concessioner's ownership in Government acquired or constructed facilities and/or concessioner acquired or constructed facilities and as such, is a potential liability of the United States. The possessory interest assets claimed by the Concessioner are shown on Schedule "D" of the Annual Financial Report. Schedule "K" describes the possessory interest assets added during the past year. The Superintendent has the responsibility to approve beforehand all possessory interest improvements. Therefore, he should review these two schedules to verify approval of any additions as Possessory Interest Assets. Based on this responsibility, he also must closely monitor the concessioner's obligations regarding possessory interest assets, which are:

a. Obtaining NPS approval of plans prior to construction; (The Superintendent should document approval of those items he considers possessory interest items for later reference.)

b. Separating possessory interest assets from other capital assets on Schedule D of the Annual Financial Report; and

c. Segregating possessory interest acquisitions and disposals by appropriate column on Schedule K of the Annual Financial Report.

The concessioner's schedule of assets in which it claims a possessory interest should be reviewed annually by the Superintendent to determine if there are any possessory interest assets that are not listed on the appropriate exhibit to the contract or if any such assets should be deleted. During the rating period the Superintendent should make sure that Schedules "D" and "K" of the Annual Financial Report are accurate with respect to possessory interest assets. In addition, Schedules "D" and "K" should be compared with Exhibit "D" to the contract and, if necessary, amend Exhibit "D" as appropriate. NOTE: Contracts issued prior to 1979 do not contain such an exhibit.

†7. Utilities. (Item 6, of Checklist.)

If the concessioner is overdue in paying for utilities provided by the NPS, or has not paid previous bills in a timely manner during the rating period, the concessioner should not be considered in compliance with this section of the contract. However, such factors as the length of time late, correspondence with the concessioner in an attempt to collect fees, the concessioner's responsiveness, and other mitigating circumstances, should be considered. If the concessioner was not billed for these services in a timely manner by the NPS, he should not be rated as being in noncompliance with this element. Utility rates should be determined as defined in the contract or by any recent policy established since the contract was awarded.

†8. Accounting Records And Reports. (Item 7, of Checklist.)

If the annual financial report has not been received or properly audited, the concessioner cannot be considered in compliance with the terms of the contract/permit. However, the Superintendent may use his judgment if the report has been received late. Such factors as the length of time late, correspondence with the concessioner in an attempt to receive the report, the concessioner's responsiveness and other mitigating circumstances should be considered.

†9. Franchise Fees. (Item 8, of Checklist.)

If franchise fees, including building use fees, have not been paid in a timely fashion by the concessioner, the concessioner cannot be considered in compliance with the terms of the contract. Please keep in mind that under current contract language, some concessioners are required to submit fees more than once a year and some on a monthly basis. Interest charges are often due on late submittals.

If payments have been received late, the Superintendent must use his judgment to determine the concessioner's compliance with the terms of the contract. Such factors as the length of time late, follow-up correspondence, the concessioner's responsiveness and other mitigating circumstances should be considered.

10. Bond And Lien. (Item 9 of Checklist)

If a bond was required to guarantee performance of the contract, give the amount and the date posted. If no bond was required check "N/A" on Form 10-630.

11. Termination. Not a compliance item. Not included on checklist.

12. Compensation. Not a compliance item. Not included on checklist.

13. Assignment Or Sale Of Interest. (Item 10 of Checklist)

In the event that a concessioner is entertaining an offer from a potential buyer, the incumbent concessioner and prospective buyer must submit a complete "proposal" to the National Park Service requesting approval of the transaction. If the proposed transaction is acceptable, approval is given in one of two ways. Where it is a stock purchase, the sale is approved by letter. When it is an asset purchase, an assignment and acceptance document is required. In either case, the terms and conditions of any contingent NPS approval must have been fully met by both parties to a sale before it merits affirmative compliance.

14. Approval Of Subconcession Contracts. (Item 11, of Checklist.)

All contracts and agreements proposed to be entered into by the concessioner with respect to the exercise by others of privileges granted by its contract must be approved by the Regional Director before becoming effective. Generally, subconcessions are not encouraged and will not be approved unless the proposed subconcession operation is essential to provide better service to the public and unless the prime concessioner furnishes the basic facilities and/or services to the subconcessioner. Concessioner agreements with coin-operated machine companies do not normally meet the criteria for a subconcession and, therefore, should not be considered as subconcession contracts.

Approved subconcession contracts require the concessioner to pay to the Secretary within a prescribed time, fifty percent of any and all fees, commissions, or compensation payable to the concessioner by the subconcessioner. This is in addition to the franchise fee payable on the total gross receipts of the subconcessioner as provided for in the concession contract. If no third party exists, check "N/A" on Form 10-630.

If there are any agreements or arrangements between the concessioner and a third party(ies) that fall within the above policy guidelines, the Superintendent should take the necessary steps to have the concessioner either enter into a subconcession contract with the third party, or provide the service itself, or to obtain a separate concessioner pursuant to a SOR prospectus.

†15. Insurance. (Item 12, of Checklist.)

Concession contracts require concessioners to carry appropriate insurance. A review of the insurance carried should be made to determine its adequacy and the findings documented. Procedures for review of the concessioner's insurance are set forth in Chapter 23 of this Guideline. Following these procedures the Superintendent should complete the Insurance Review Checklist (Chapter 23, Exhibit 3) and then use the Insurance Review Checklist to complete section 12 of the Contract Compliance form. A copy of the Insurance Review form should be attached to the WASO and Regional copies of the Contract/Permit Compliance form.

U.S. DEPARTMENT OF THE INTERIOR
 NATIONAL PARK SERVICE

Form 10-030
 (Rev. 7/83)

SUPERINTENDENT'S ANNUAL CONCESSIONER CONTRACT/PERMIT COMPLIANCE REPORT
FOR THE 19__ OPERATING YEAR

PARK _____ CONCESSIONER _____

CONTRACT NO. _____ PERMIT NO. _____

	COMPLIANCE		
	YES	NO	N/A
*1. Building and Improvement Program	_____	_____	_____
2. Accommodations, Facilities & Services	_____	_____	_____
3. Plant, Personnel and Rates	_____	_____	_____
*4. Maintenance	_____	_____	_____
5. Possessory Interest	_____	_____	_____
*6. Utilities	_____	_____	_____
*7. Accounting Records and Reports	_____	_____	_____
*8. Franchise Fee	_____	_____	_____
9. Bond and Lien	_____	_____	_____
10. Assignment	_____	_____	_____
11. Subconcession	_____	_____	_____
*12. Insurance	_____	_____	_____

* Denotes "Special Attention" Items

CONTRACT/PERMIT COMPLIANCE RATING: _____
 (Satisfactory, Marginal, Unsatisfactory)

 Superintendent's Signature

 Date

 Concessioner's Signature

(To signify receipt of rating)

 Date

CONTRACT/PERMIT COMPLIANCE CHECKLIST

*1. **BUILDING AND IMPROVEMENT PROGRAM** (Item 1 of Instructions)

A. Does the contract contain a building & improvement program? YES _____ NO _____

B. If the answer to (A) above is yes,

(1) Is any portion of such program applicable to this rating period? YES _____ NO _____

(2) If (1) above is yes, have plans and specifications been submitted and approved by the Superintendent?
 YES _____ NO _____

(3) What portion(s) of the building and improvement program has been completed during this rating period?

(4) What was starting date as stated in the contract? _____

(5) When was actual starting date? _____

(6) When is completion date? _____

(7) If already completed, give date: _____

(8) Has the concessioner submitted documentation to evidence expenditures of the program?
YES _____ NO _____

(9) (ACCESSIBILITY OF FACILITIES TO HANDICAPPED PERSONS TO BE ADDED AT A LATER DATE)

2. ACCOMMODATIONS, FACILITIES AND SERVICES (Item 2 of Instructions)

A. Are all accommodations, facilities and services required/authorized in this contract/permit being provided?
YES _____ NO _____

B. Are any services being provided that are not authorized under this contract/permit?
YES _____ NO _____ If yes, please list:

C. (1) Does the concessioner have a preferential right to new or additional service? YES _____ NO _____
(2) If such new or additional services have been identified by the NPS, has the concessioner agreed to provide them? YES _____ NO _____

If the answer to (2) above is no, explain: _____

3. PLANT, PERSONNEL AND RATES (Item 3 of Instructions)

A. Does the concessioner meet the criteria for needing an affirmative action plan? YES _____ NO _____
(See item #3 of instructions for criteria.)

If the answer is no, disregard the next question, if yes:

(1) Does the concessioner have a written affirmative action plan? YES _____ NO _____

If the answer is no, explain: _____

B. Are EEO posters furnished and adequately displayed? YES _____ NO _____

C. Have current rates used by the concessioner been approved by the Superintendent and properly documented by supporting rate approval studies in accordance with the Rate Approval Program handbook? YES _____ NO _____

If the answer is no, explain: _____

***4. MAINTENANCE (Item 5 of Instructions)**

A. Has the concessioner fulfilled the terms of any maintenance agreement including the dollar amount if stipulated? YES _____ NO _____. If "NO" give reason: _____

5. POSSESSORY INTEREST (Item 6 of Instructions)

A. Has the concessioner (a) made any capital improvements to government improvements? YES _____ NO _____. (b) acquired any possessory interest in concessioner's improvements not listed on the exhibit to the contract during this rating period? YES _____ NO _____. If yes, list: _____

B. Was prior written approval given by the Service for these improvements? YES _____ NO _____

***6. UTILITIES (Item 7 of Instructions)**

A. List utility services provided by the park for the concessioner:

B. If the concessioner is charged for the service(s) provided, has he paid for them in a timely manner? YES _____ NO _____

***7. ACCOUNTING RECORDS AND REPORTS (Item 8 of Instructions)**

A. If this is the first year of a contract, was the opening balance sheet required by contract provision? YES _____ NO _____. If "YES", when was it submitted? _____

B. Considering the most recent Annual Financial Report (AFR) due within this rating period:

(1) Give date AFR was due: _____

(2) Date AFR was submitted: _____

C. Was AFR audited by an independent licensed or certified public accountant, if required? YES _____ NO _____

***8. FRANCHISE FEE (Item 9 of Instructions)**

A. Are there franchise fees (including building use fees) past due from the concessioner? YES _____ NO _____

B. For the last 12 months, list due date and date paid for franchise fees: (NOTE: Some concessioners are required to pay more than once a year)

Due: _____
 Paid: _____

Due: _____
 Paid: _____

C. If applicable, what is the next date for renegotiation of franchise fees? _____

D. Are the amount of sales claimed as exempt from franchise fee supported by invoices bearing a certification by the seller that the items meet NPS standards for native American and Indian handicraft items?
YES _____ NO _____

9. **BOND AND LIEN** (Item 10 of Instructions)

A. Was a bond required by the contract? YES _____ NO _____

B. If yes, give amount and date posted? _____

If a bond was not required, mark item 9 of rating sheet "N/A".

10. **ASSIGNMENT** (Item 13 of Instructions)

A. If this concession operation has been sold to a successor during this evaluation year, has the successor fulfilled all obligations stipulated by the NPS in (1) letter(s) of contingent and/or final approval, or (2) the assignment, acceptance and approval document? YES _____ NO _____

B. If the name of the business has changed in the past year, give new name: _____

11. **SUBCONCESSION** (Item 14 of Instructions)

A. Are there any agreements with third parties to provide any services authorized or required in the contract/ permit with the concessioner? YES _____ NO _____

B. If the answer is "Yes", what services do they provide? (List)

C. Are all such arrangements covered by an NPS approved subconcession contract? YES _____ NO _____

If the answer is no, explain: _____

*12. **INSURANCE** (Item 15 of Instructions)

Fill out the attached Insurance Review Checklist first; it will enable you to answer the questions below.

CAUTION: The current NPS insurance requirements are applicable to contracts based on SOR's published after May 1, 1981. Earlier contracts may vary substantially and some questions in the checklist may not apply. Answer those which do apply and attach the checklist anyway because it provides data which WASO needs.

A. Has concessioner provided the Superintendent with a Certificate of Insurance or Broker's Analysis?
YES _____ NO _____

B. Has the concessioner purchased all the required property coverages in the amount required?
YES _____ NO _____

C. Has the concessioner purchased all the required liability coverages in the amount required?
YES _____ NO _____

D. Has the concessioner had inserted in all insurance policies appropriate clauses as required in the concession contract? YES _____ NO _____

If no, explain: _____

CONCESSIONS

NPS-48

Concessioner Review Program - Contract Compliance

EXHIBIT 1
Chapter 22
Page 5

OTHER REQUIREMENTS (ADD)

INSURANCE REVIEW CHECK LIST

 (Date)

Park: _____ Concessioner: _____

Contract based on SOR issued after May, 1981? YES _____ NO _____

Insurance Expiration Date:

Property: _____ Liability: _____

Concessioner has submitted:

Certificate of Insurance YES _____ NO _____
 Broker's Analysis YES _____ NO _____

A. PROPERTY INSURANCE COVERAGE

1. Compare building value as estimated by NPS with Fire and extended coverage insurance (use continuation sheet if necessary).

Building	Value (A)	Insurance Coverage (B)	Coverages on Contents
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
Total	\$ _____	\$ _____	\$ _____

2. Do the coverages in column B equal the values in column A? YES _____ NO _____

3. If blanket coverage is provided what is the amount? \$ _____
 Does that amount equal the highest building value in column A? YES _____ NO _____

If no, explain.

4. If the answer to question 2 or 3 is no:

a. Has the Regional Director made a formal determination that the building(s) affected will not be replaced if destroyed? YES _____ NO _____ N/A _____

If yes, where is the decision documented?

b. If NPS has not made such a "no replacement" determination, was one of the following lesser coverages approved?

Type Coverage	Approved by	
Surplus line	Superintendent	_____
Deductible	Reg. Dir. up to 5%	_____ Dir. over 5% _____
Self Assumption	Reg. Dir. up to 5%	_____ Dir. over 5% _____
Actual cash value	Dir.	_____
No insurance	Dir.	_____

5. When were building values last adjusted for inflation? _____

6. Special Coverages

Coverages	Required Yes/No	If Required, amount coverage
Contents (if not in above)	<input type="checkbox"/> <input type="checkbox"/>	\$ _____
Builders Risk	<input type="checkbox"/> <input type="checkbox"/>	\$ _____
Boiler and Machinery	<input type="checkbox"/> <input type="checkbox"/>	\$ _____
Sprinkler leakage	<input type="checkbox"/> <input type="checkbox"/>	\$ _____
Other (specify)	<input type="checkbox"/> <input type="checkbox"/>	\$ _____

7. Does insurance policy(s) contain the following clauses?

	Yes	No	N/A
U.S. Government a named insured	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Same site property replacement clause waived	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Loss payable clause for Government owned buildings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

B. LIABILITY INSURANCE COVERAGE

1. Types and amounts of coverage

Type Coverage	Amount of Coverage		
	Bodily injury per Person	Occurrence	Property Damage
Comprehensive General Liability	\$ _____	\$ _____	\$ _____
Does it include:			
Product	Yes _____ No _____ N/A _____		
Contractual	Yes _____ No _____ N/A _____		
Liquor	Yes _____ No _____ N/A _____		
Protection & Indemnity/Watercraft	\$ _____	\$ _____	\$ _____
Comprehensive Auto Liability	\$ _____	\$ _____	\$ _____
Workers Compensation			
Statutory	Yes _____ No _____		
Private	Yes _____ No _____		

In addition to the above, does the concessioner have an umbrella liability policy? Amount \$ _____

2. Does policy(s) specify the insurance company shall have no right of subrogation against the U.S. Government? YES _____ NO _____