

## Setting Minimum Acceptable Franchise Fees

Issue	NPHA proposal	Interior Proposed Rule	Garden	Van Ness Feldman
<p><b>Minimum Acceptable Franchise Fees</b></p>	<p><b>36 C.F.R. §51.78- Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?</b></p> <p>(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. <b>The Director shall set the minimum acceptable franchise fee in the prospectus at a level which encourages maximum participation in the competition and ensures concessioners can provide necessary and appropriate facilities to the public. In determining the minimum acceptable franchise fee, the Director shall use general hospitality industry data for similar operations to determine the minimum acceptable franchise fee consistent with the foregoing direction in this section and provide a detailed basis for the assessment of the minimum franchise fee in the prospectus.</b> Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.</p>	<p><b>§ 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?</b></p> <p>(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. The Director shall set the minimum acceptable franchise fee in the prospectus at a level which the Director determines will encourage participation in the competition and so that concessioners can provide necessary and appropriate visitor services to the public, consistent with the foregoing requirements. In determining the minimum acceptable franchise fee, the Director shall use data including relevant general hospitality industry data for similar operations to determine the minimum acceptable franchise fee and provide a basis for the assessment of the minimum acceptable franchise fee in the prospectus. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.</p>	<p><b>Minimum acceptable franchise fee (§ 51.78):</b> NPS agreed with NPHA’s proposal to add language into the regulations requiring the agency to set the minimum franchise fee in prospectuses at an amount that encourages more competition. NPS also agreed with NPHA’s proposal that it provide the basis for how the agency set that fee. NPHA may want to submit comments urging the agency to add language to the regulation detailing the specific bases it will provide to ensure its explanation is substantive.</p>	<p><b>Setting Franchise Fees.</b> The proposed rule would add new language explaining how NPS will set the minimum acceptable franchise fee in a prospectus. Specifically, it would state that the minimum fee is to be set at a level that NPS determines will encourage competition and in a manner so that “concessioners can provide necessary and appropriate visitor services to the public.” It would also require NPS to use data, including data from the hospitality industry for similar operations, when determining the minimum franchise fee and to provide the basis for this determination in the prospectus. NPS says that these additions are consistent with current NPS practice but would further transparency in published prospectuses. Given that NPS historically has been very reluctant to share information regarding the basis for its minimum franchise fee determinations, whether and to what extent these additions would have the stated result is uncertain.</p>