



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Imposition of Federal Land
"User Fee" on Federal-aid Highways and
Federal Roads

Date APR 30 1997

From: Director, Office of Engineering

Reply to
Attn of HNG-12

To: Regional Administrators

Situations may arise where Federal-aid highways lie within or pass through National Parks or other Federal lands where the authority having jurisdiction over the Federal lands desires to charge a "user fee" to pay for the costs of developing, operating and maintaining non-highway elements in the area. For example, the fee might provide financial support for nature or learning centers, trails, campgrounds, or parking lots. The proposed collection point for this fee may be at locations where the Federal-aid highway enters the park or Federal lands. A question has arisen as to whether the collection of a fee from a motorist entering the park or recreational area on a Federal-aid highway is allowed in light of the toll-free provisions of 23 U.S.C. 301.

Collection of a user fee on a Federal-aid highway to support Federal land facilities is acceptable under the following conditions:

1. The motorist must be allowed to use the Federal-aid highway, along with accompanying motorist facilities (such as rest areas or scenic turnouts) which have been improved with Federal-aid highway funds, free of charge. If this occurs, the user fee is viewed as being related to use of the park or recreational area and not merely for highway passage through the area, and the fee is not regarded as a toll in conflict with 23 U.S.C. 301.
2. Since motorists may not be charged if not using the park or other land, the fee collection mechanism must avoid improper charges. This may be accomplished through such means as a clear notice to motorists, focusing the place or manner of fee collection on uses of the park or other land, or other appropriate measures having this result.
3. Any fee collection points should be designed and operated with appropriate consideration for motorist safety and with minimal disruption to traffic on the Federal-aid highway.
4. Federal-aid highway funds shall not participate in construction of facilities or other improvements related to the collection of the user fee.

The above position applies where Federal-aid highway funds have been used on the portion of the Federal-aid highway route where the user fee is being collected or are used at some point in the future on the route after the user fee collection has already begun. If no Federal-aid highway funding has been used on this portion of the route, collection of fees or imposition of tolls is not subject to the provisions of 23 U.S.C. 301 and such fees or tolls may be imposed at the Federal agency's discretion.

The above position is also applicable to park or recreational areas owned by State or local governments.

In general, the above position does not apply to "park roads" or "parkways," as defined in 23 U.S.C. 101, that have been improved with funding under 23 U.S.C. 204. The National Park Service (NPS) has jurisdiction over the roads and may impose fees, as appropriate, on all users of the park roads or parkways. There is previous legislation that allows the NPS to collect these fees. Those special cases where the park road or parkway is also a Federal-aid route will be handled on a case-by-case basis and Headquarters should be consulted before final decisions are made.

In addition, the above position does not apply to those Federal recreation areas designated as demonstration projects under Section 315 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, P.L. 104-134, a copy of which is attached for your reference. It is noted that P.L. 104-208, enacted September 30, 1996, amended Section 315(b) to increase the maximum number of demonstration areas from 50 to 100 and amended Section 315(f) to extend the authority to collect fees and the availability of the fee account by an additional year. Section 315 authorizes a recreational fee pilot program for certain Federal lands. Further, the demonstration projects are established "...notwithstanding any other provision of law...." Accordingly, fee collection demonstration projects established under the authority of Section 315 are not governed by the provisions of 23 U.S.C. 301.

This memorandum has been coordinated with the Office of Chief Counsel and the Federal Lands Highway Office.



Gerald L. Eller

Attachment

SEC. 315. RECREATIONAL FEE DEMONSTRATION PROGRAM.—(a) 16 USC 4601-6a.
The Secretary of the Interior (acting through the Bureau of Land Management, the National Park Service and the United States

Fish and Wildlife Service) and the Secretary of Agriculture (acting through the Forest Service) shall each implement a fee program to demonstrate the feasibility of user-generated cost recovery for the operation and maintenance of recreation areas or sites and habitat enhancement projects on Federal lands.

(b) In carrying out the pilot program established pursuant to this section, the appropriate Secretary shall select from areas under the jurisdiction of each of the four agencies referred to in subsection (a) no fewer than 10, but as many as 50, areas, sites or projects for fee demonstration. For each such demonstration, the Secretary, notwithstanding any other provision of law—

(1) shall charge and collect fees for admission to the area or for the use of outdoor recreation sites, facilities, visitor centers, equipment, and services by individuals and groups, or any combination thereof;

(2) shall establish fees under this section based upon a variety of cost recovery and fair market valuation methods to provide a broad basis for feasibility testing;

(3) may contract, including provisions for reasonable commissions, with any public or private entity to provide visitor services, including reservations and information, and may accept services of volunteers to collect fees charged pursuant to paragraph (1);

(4) may encourage private investment and partnerships to enhance the delivery of quality customer services and resource enhancement, and provide appropriate recognition to such partners or investors; and

(5) may assess a fine of not more than \$100 for any violation of the authority to collect fees for admission to the area or for the use of outdoor recreation sites, facilities, visitor centers, equipment, and services.

(c)(1) Amounts collected at each fee demonstration area, site or project shall be distributed as follows:

(A) Of the amount in excess of 104% of the amount collected in fiscal year 1995, and thereafter annually adjusted upward by 4%, eighty percent to a special account in the Treasury for use without further appropriation, by the agency which administers the site, to remain available for expenditures in accordance with paragraph (2)(A).

(B) Of the amount in excess of 104% of the amount collected in fiscal year 1995, and thereafter annually adjusted upward by 4%, 20 percent to a special account in the Treasury for use without further appropriation, by the agency which administers the site, to remain available for expenditure in accordance with paragraph (2)(B).

(C) For agencies other than the Fish and Wildlife Service, up to 15% of current year collections of each agency, but not greater than fee collection costs for that fiscal year, to remain available for expenditure without further appropriation in accordance with paragraph (2)(C).

(D) For agencies other than the Fish and Wildlife Service, the balance to the special account established pursuant to subparagraph (A) of section 4(i)(1) of the Land and Water Conservation Fund Act, as amended.

(E) For the Fish and Wildlife Service, the balance shall be distributed in accordance with section 201(c) of the Emergency Wetlands Resources Act.

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(2)(A) Expenditures from site specific special funds shall be for further activities of the area, site or project from which funds are collected, and shall be accounted for separately.

(B) Expenditures from agency specific special funds shall be for use on an agency-wide basis and shall be accounted for separately.

(C) Expenditures from the fee collection support fund shall be used to cover fee collection costs in accordance with section 4(i)(1)(B) of the Land and Water Conservation Fund Act, as amended: *Provided*, That funds unexpended and unobligated at the end of the fiscal year shall not be deposited into the special account established pursuant to section 4(i)(1)(A) of said Act and shall remain available for expenditure without further appropriation.

(3) In order to increase the quality of the visitor experience at public recreational areas and enhance the protection of resources, amounts available for expenditure under this section may only be used for the area, site or project concerned, for backlogged repair and maintenance projects (including projects relating to health and safety) and for interpretation, signage, habitat or facility enhancement, resource preservation, annual operation (including fee collection), maintenance, and law enforcement relating to public use. The agencywide accounts may be used for the same purposes set forth in the preceding sentence, but for areas, sites or projects selected at the discretion of the respective agency head.

(d)(1) Amounts collected under this section shall not be taken into account for the purposes of the Act of May 23, 1908 and the Act of March 1, 1911 (16 U.S.C. 500), the Act of March 4, 1913 (16 U.S.C. 501), the Act of July 22, 1937 (7 U.S.C. 1012), the Act of August 8, 1937 and the Act of May 24, 1939 (43 U.S.C. 1181f et seq.), the Act of June 14, 1926 (43 U.S.C. 869-4), chapter 69 of title 31, United States Code, section 401 of the Act of June 15, 1935 (16 U.S.C. 715s), the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601), and any other provision of law relating to revenue allocation.

(2) Fees charged pursuant to this section shall be in lieu of fees charged under any other provision of law.

(e) The Secretary of the Interior and the Secretary of Agriculture shall carry out this section without promulgating regulations.

(f) The authority to collect fees under this section shall commence on October 1, 1995, and end on September 30, 1998. Funds in accounts established shall remain available through September 30, 2001.

Effective date.
Termination
date.