



IN REPLY REFER TO:

United States Department of the Interior
NATIONAL PARK SERVICE

Buffalo National River
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C38(BUFF-OC)

September 11, 2009

CONCESSIONS POLICY LETTER NO. 7

SUBJECT: Commercial Use Authorization (CUA) Suspension, Restriction, Revocation and Denial Policy

AUTHORITY: Public Law 105-391, Section 418; 16 United States Code (USC) 1 and 3

PURPOSE: This policy and procedure provides guidance park managers when considering whether to suspend, restrict or revoke Commercial Use Authorization (CUA) and when considering whether to approve an application for a future permit.

DEFINITIONS:

- Permittee/Owner - a sole proprietorship, partnership, limited partnership, joint venture, or corporation including corporate officers and those shareholders who have a controlling interest in a corporation that has applied for or received a CUA.
- Employee - a person in the service of the permittee/owner under any contract of hire, express or implied, oral or written, where the permittee/owner has the power or right to control and direct the employee in the work performed.
- Violation –
 1. Entering a plea of guilty or no contest or being found guilty of violating a state or federal law or regulation where a link exists between the offense and the business activity authorized by the permit regardless of whether the violation occurred in a unit of the National Park System;
 2. Failure to comply with state or federal law or regulation where a link exists between the offense and the business activity authorized by the permit regardless of whether the violation occurred in a unit of the National Park System and regardless of whether a court enters a finding of guilt;
 3. Violation of 18 U.S.C. 1001, providing false information to any agency or department of the United States;
 4. Failure to comply with a federal or state health or safety code or regulation when conducting activities authorized by the CUA;

5. Failure to comply with the provisions and conditions of the CUA.

POLICY: This policy and procedure is a guideline. The superintendent may take a different action than that called for in the policy if circumstances dictate. The superintendent retains the authority to immediately suspend, restrict or revoke a permit or deny a future permit request.

- Suspension, Restriction and Revocation of a Permit

A CUA may be suspended, restricted or revoked when the permittee/owner or employee commits or receives any violation as defined above. For purposes of taking action for subsequent violations, earlier violations will generally be considered if they occurred within five years of a subsequent violation. The following table may be used as a guideline for taking action following a violation:

<u>VIOLATION</u>	<u>ACTION BY SUPERINTENDENT</u>
First violation	A minimum of a written warning. May include a period of suspension or restriction of the CUA for up to 30 days depending upon the violation
Second violation	Suspension or restriction of the CUA for up to 30 days or more or revocation of the CUA depending upon the violation
Third violation	Revocation of the CUA

- Denial of a Permit Application

An application for a CUA may be denied if the permittee/owner or any of the permittee/owners current or proposed employees committed a violation, as defined above, within five years of the date of application. A permittee/owner that has had a CUA revoked may be denied a new CUA for up to five years from the date of revocation.

- Process

If the Superintendent believes a permittee has committed a violation:

1. Notify the permit holder of the violation, in writing, as soon as possible or appropriate. It is in the best interest of the NPS and the permittee that the permittee be made aware of the violation and be given an opportunity to take corrective action to avoid future violations and provide any explanation of the circumstances that lead to the violation. In particular, if a company employee is cited or otherwise charged with a violation (but not the company itself), notify the permit holder, who may not be aware of the situation. Notify the Concessions Management Office.
2. Give the permittee an opportunity to explain the circumstances that lead to the violation before taking final administration action at the park level. This does not preclude immediate suspension or restriction of the permit when warranted, subject to modification after the permittee has provided any explanation. If the permittee appeals, the regional director will consider the permittee's response. Therefore, the Superintendent ought to do the same before taking final action at the park level.

3. Notify the permittee of their right to appeal to the Regional Director at the time final administrative action is taken at the park. See appeal procedure below.

- Appeal

An appeal of the action may be made to the NPS Regional Director. Such an appeal must be submitted in writing within 30 days of receipt of the decision. Appeals must set forth the facts and circumstances that the appellant believes support the appeal. The appellant may request an informal meeting to discuss the appeal with the regional director or his representative. After consideration of the materials submitted by the appellant and the National Park Service record of the matter, and meeting with the appellant if so requested, the Regional Director will affirm, reverse, or modify the decision appealed and will set forth in writing the basis of the decision. A copy of the decision will be forwarded to the appellant and will constitute the final administrative decision in the matter.



Kevin G. Cheri
Superintendent

cc: Concessions Program Manager, Midwest Region
Concessions Program Manager, Buffalo National River
Chief Ranger, Buffalo National River
District Rangers, Buffalo National River