IN REPLY REFER TO:

(2410)

Memorandum

To: Chief, Commercial Services Program

From: Associate Director, Business Services

Subject: Approval of National Park Service Commercial Services (CS) Guide Chapter 11 – Commercial Use Authorizations (CUAs)

This memorandum approves CS Guide Chapter 11 – CUAs and recognizes this chapter consolidates and supersedes all policy memoranda previously issued for CUAs.
11.1 Purpose

This chapter provides detailed procedures to implement current laws, Executive Orders, NPS Management Policies 2006, and other Service policy related to commercial use authorizations (CUAs). This chapter of the CS Guide consolidates and supersedes all policy memoranda previously issued for CUAs. Policy memoranda and guidance issued after the effective date of this chapter of the CS Guide have not been incorporated and still are in effect.

11.2 CUA Program Statutory and Policy Framework

Section 418 of the 1998 Act authorizes the NPS to issue CUAs to authorize a private person, corporation, or other entity to provide commercial visitor services in parks. Without a CUA, other permit, contract, or other written agreement with the United States, such activities otherwise are prohibited under 36 CFR § 5.3. CUAs are required if an operator provides goods or services to park visitors that: 1) take place at least in part on property managed by the NPS; 2) use park resources; and 3) are for the purpose of monetary gain or profit.

The 1998 Act authorizes the NPS to issue CUAs only for appropriate visitor services (See Section 3.4.1) and requires the NPS to:

- Collect a reasonable fee that recovers the NPS’s costs for the administration and management of the CUA, at a minimum
- Take appropriate steps to limit the liability of the United States arising from the provision of visitor services under the CUA
- Limit for-profit CUAs for services originating and provided solely within an NPS unit (in-park CUAs) to operations with annual gross receipts of no more than $25K
- Limit CUAs for services originating and terminating outside an NPS unit to incidental use of park resources
- Only issue CUAs for commercial services that will have no more than minimal impact on resources and values of the park
- Prohibit CUAs from constructing any structure, fixture, or improvement on NPS-managed lands
- Limit the CUA term to a maximum two years with no renewal rights
- Limit the number of CUAs or establish limiting conditions to ensure preservation and proper management of park resources and values

A CUA does not exempt the holder or clients from NPS entrance fee requirements (see Reference Manual #22, Section 9.3 and 9.4) nor does it grant automatic access to areas controlled by reservation systems.

11.3 Compliance Process for CUAs

The NPS must comply with a variety of federal, state, and local environmental laws and regulations when considering whether to issue a CUA. These laws and regulations include, but are not limited to, the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the Endangered Species Act (ESA).

The NPS must initiate the compliance process if the requested commercial use is consistent with park purpose and does not conflict with park management plans, park policies, or regulations, and the superintendent is interested in allowing the proposed commercial use. The NPS does not have to allow every proposed activity. The compliance process allows NPS to evaluate
resource impacts associated with the commercial use.

If the compliance process reveals a proposed commercial use will cause no more than minimal impact to park resources and values under normal circumstances, required NEPA documentation must describe how the action fits within a categorical exclusion (CE). Parks may avoid preparing separate CE documentation for each CUA within a specific commercial use category by using programmatic CEs. Programmatic CEs provide NEPA documentation for multiple instances of an ongoing or recurring activity when the activity or activities and resulting impacts are predictable. Parks must review programmatic CEs every five years, at a minimum.

If the proposed commercial use has the potential to cause more than minimal adverse impacts under normal circumstances, the NPS must deny the CUA request because the 1998 Act requires CUAs to have no more than minimal impact. If the park superintendent wishes to allow the commercial use, the park staff may consider developing a concession contract and proceed with a more comprehensive environmental analysis, including preparing an environmental assessment (EA) or environmental impact statement (EIS), if necessary (See Section 11.4).

When a superintendent wants to issue a CUA for a new commercial use not covered under existing NEPA documentation, the NPS must include the costs of the compliance process in the CUA application fee (See Section 11.6.1). Park staff must explain to the applicant the administrative costs associated with the compliance process and provide the applicant the opportunity to withdraw the application before beginning the compliance process. The NPS also may collect an initial administrative fee covering the costs of processing a typical application prior to initiating compliance.

The NPS may divide the total compliance process recoverable costs among existing or projected applicants. For example, if during the compliance process the NPS determines the proposed commercial use is appropriate and desires to issue five CUAs allowing the commercial use, the park may divide the compliance process recoverable costs by five and charge each applicant, including the initial applicant, one-fifth (1/5) of those costs.

11.4 CUAs vs. Concession Contracts

CUAs, like concession contracts, authorize third parties to provide commercial visitor services in parks. CUAs, like other permits, authorize appropriate activities in parks. Concession contracts, in comparison, authorize appropriate commercial activities that park management has determined to be necessary for public use and enjoyment of a park area (See Section 3.4.1). In other words, CUAs do not have to provide the visitor service while a concessions contract requires how and when the concessioner must provide the service. Other key differences between CUAs and concession contracts include:

- CUAs have a two-year maximum term and concession contracts may have terms up to 20 years
- The NPS does not approve CUA holder rates for visitor services except in rare cases when NPS limits the number of CUAs issued for the services (See Section 11.10)
- The NPS does not provide a CUA holder a reasonable opportunity to make a profit

Certain circumstances indicate when the NPS may consider issuing concession contracts rather than CUAs or may prompt the NPS to convert an existing CUA to a concession contract. These indicators include:
The NPS determines that a service previously determined as appropriate has become necessary because it provides an essential service or facility not available within a reasonable distance from the park.

The NPS determines that it needs to strictly manage operators or associated impacts.

The NPS determines associated impacts are more than minimal.

The NPS determines it must limit the number of CUAs and conduct a competitive selection process every two years (See Section 11.10.2).

The NPS also should convert existing CUAs to concession contracts when an unanticipated rise in demand or rates causes an in-park CUA’s annual gross receipts to exceed the statutory limit of $25,000. Park staff may issue CUAs for three years after an in-park, for-profit CUA exceeds $25,000 in annual gross receipts while preparing a prospectus for a concession contract. Alternatively, park staff may consider advertising the opportunity to allow more CUA holders to provide the service to keep the gross receipts per CUA holder under the statutory limit while still meeting visitor demand.

11.5 Required CUA Forms

The NPS must use the Office of Management and Budget (OMB) approved CUA application (NPS Form 10-550), annual CUA report (NPS Form 10-660), and monthly CUA report (NPS 10-660A) forms. CUAs issued must use NPS Form 10-115. No other CUA forms are allowed. The OMB-approved form text and formatting may not be altered, as alteration may result in unapproved information collection. As explained below, however, park staff may develop and include in the CUA itself terms and conditions specific to the park and the CUA operations.

11.5.1 Required CUA Application

The OMB-approved CUA application contains standard conditions to which every CUA applicant must agree. The conditions were developed in accordance with the 1998 Act as well as regulations applicable to entities under contract with the United States of America. These standard conditions require the CUA applicant to:

- Comply with all applicable laws and regulations, and conditions of the authorization
- Protect the United States, its agents, and employees from all liabilities and claims
- Reimburse the NPS for all costs incurred by the NPS as a result of accepting and processing the application and managing and monitoring the authorized activity
- Provide a statement of its gross receipts from its activities under the authorization
- Maintain an accounting system and grant the NPS access to its books and records at any time for the purpose of determining compliance with the terms and conditions of the CUA
- Provide commercial services to visitors at reasonable rates satisfactory to the NPS

The OMB-approved CUA application prohibits the CUA applicant from:

- Knowingly providing false information
- Requiring clients to sign a waiver of liability, insurance disclaimer, or indemnification agreement
- Asserting any legal claim that they hold a trademark, tradename, servicemark, or other ownership interest in the words “National Park Service”, the initials “NPS”, or official name of any unit or part thereof
- Constructing any structures, fixtures, or improvements in the park area
11.5.1.1 Developing Special Park Conditions

Park staff may create special park conditions specific to an approved commercial use to ensure the CUA holder conducts business in a manner consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. Park staff add these conditions to the standard conditions included in the OMB-approved application. Special park conditions should not include information already included in the standard conditions nor should they conflict with or contradict the standard conditions. The required CUA compliance process (see Section 11.3) is an ideal time for an interdisciplinary team to develop these special park conditions.

Special park conditions may include information such as allowable operating times and locations and limits to group size. For some approved commercial services, park staff also may require CUA holders to obtain and maintain licenses, registrations, and training certificates. Park staff must identify these special park conditions and any additional documentation requirements in the CUA application.

Park staff should consider the following when creating special park conditions:

- Using "must" to describe the obligations of the CUA holder
- Using the similar conditions developed for the same commercial use in nearby parks
- Providing advanced notice of operational changes required by special park conditions so current CUA holders and future CUA applicants may plan for those operational changes (e.g. providing notification six months before accepting CUA applications that, beginning for the next season, CUA holder employees operating in the park must have current first aid and CPR certifications)

11.5.2 Required CUA Reporting

All CUA holders must provide activity reports to the NPS using the OMB-approved annual and monthly CUA reporting forms. The NPS uses information from these forms to understand the effects of commercial uses authorized by CUAs, including effects on natural and cultural resources, effects on other park visitors, and financial impact on local and regional economies. The NPS must deny subsequent CUA applications until the CUA applicant submits past-due required activity reports.

The annual CUA report requires the CUA holder to report visitor use statistics, reportable injury data, total gross receipts, and gross receipts earned from in-park or park-dependent operations. The NPS defines park-dependent operations as those commercial activities that are packaged and sold, marketed to include, or coincidentally include, entry into the park boundaries for part of or all of the activity duration.

The NPS requires CUA holders to complete and submit the annual CUA report by end of January for the previous calendar year. Park staff must report CUA holder information collected by annual CUA reports to the regional office. This data request generally occurs during the first quarter of the year.

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2 U.S. Department of the Interior (Department) ethics regulations at 5 C.F.R. § 3501.103(c) prohibit Department employees, their spouses, and minor children, from acquiring or retaining permits, leases, and other rights in Federal lands granted by the Department. This prohibition includes any commercial use authorization to conduct commercial activities or services on Department property.
two months of the calendar year with a due date of February 28. Concurrently, regional chiefs must provide to the regional director a report of all CUA holders reporting annual gross revenue of $1 million or more.

Park staff may require CUA holders to submit the monthly CUA report if the NPS relies upon collected data to determine visitor use levels and associated impacts. The monthly report requires CUA holders to provide monthly visitor use statistics and reportable injury data but no financial information.

Park staff may include additional reporting tables in both the annual and monthly CUA reports to obtain additional visitation information (e.g., the number of visits to a specific park location). The OMB approved annual and monthly report forms include examples of these reporting tables.

11.5.3 CUA Forms Security and Retention

The Privacy Act requires the NPS to secure CUA records and forms at all times so that only the CUA program staff has access to this information. The NPS must store hard copies of CUA records and forms in secure filing cabinets and electronic records on secure drives, not shared drives allowing access by unauthorized personnel. Business information necessary to contact the CUA holder is not confidential. (See Section 2.7)

11.6 CUA Fees

The 1998 Act requires the NPS collect a reasonable fee for CUAs to recover associated management and administrative costs. The reasonable fee must allow the NPS to recover, at a minimum, all costs incurred by the NPS that it would not have incurred had the commercial activity not taken place.

Additionally, OMB Circular No. A-25 establishes federal policy and guidance on the scope and activities subject to user charges and provides that user charges either will be sufficient to recover the full cost of providing the benefit or will be based on market price. Specifically, Sections 6.a. and 6.d. of that circular direct how agencies should determine the amount of user charges to assess and how to determine full cost and market price.

The 1998 Act and OMB Circular No. A-25 allow the NPS to go beyond cost recovery and instead charge the market price. If the market price is higher than cost recovery, the NPS may charge that higher amount, which may yield net revenue to the park. (See Sections 11.7 and 11.8)

11.6.1 CUA Application Fee

The CUA application fee is a mandatory, one-time, non-refundable fee submitted by the applicant with the completed application. The NPS may not process the CUA application until receiving the application fee. The application fee must be sufficient to allow the NPS to recover all administrative costs associated with reviewing and approving or denying applications for CUAs. These include, but are not limited to:

♦ Preparation, mailing, and distribution of forms and correspondence including envelopes, paper, data processing, printing services, postage, and mailing
♦ Initial review to make sure the applicant has supplied all required information
♦ Compliance processes
NPS may implement a CUA application fee schedule, or standard CUA application fee, by assessing and documenting the average cost of reviewing and processing the same or similar CUA applications. NPS must maintain the supporting administrative record for fifteen years after it ceases using that CUA application fee schedule. The NPS must publish the established CUA application fee schedule on the applicable park website.

The NPS must make the CUA applicant aware of application fees and the requirement to pay the fee during preliminary discussions, including by posting the information on the park website. The NPS also must clearly explain that the applicant will be responsible for application fee payments even if the NPS denies the application. Ultimately, the application fee includes all costs to the NPS from the time of first inquiry until the NPS signs and issues the CUA or denies the application.

### 11.6.2 CUA Management Fee

The NPS must charge CUA holders a management fee that at a minimum recovers the costs of all CUA management after application approval. CUA management includes, but is not limited to, correspondence with the CUA holder, in-the-field monitoring, and the mitigation of resource impacts caused by the commercial activity. The NPS may calculate CUA management fees by calculating direct cost recovery or by assessing a market price management fee.

#### 11.6.2.1 Direct Cost Recovery Management Fee

The NPS may calculate a CUA management fee by determining the direct costs of managing the commercial service (direct cost recovery). Direct cost recovery allows the NPS to recover the full costs incurred by all park divisions involved in support of the commercial use, including monitoring the activities authorized by the CUA and cleaning up or restoring park lands or facilities after the activities have ended. These costs include charges for NPS personnel, equipment, and materials.

Park staff must closely track the personnel hours and use of equipment and materials necessary for CUA management and charge the CUA holder a management fee that recovers the cost of those personnel, equipment, and materials. Calculating direct cost recovery can be challenging when park staff are tasked with managing multiple CUAs. When the NPS uses direct cost recovery to calculate CUA management fees, the CUA application must include a condition notifying the CUA holder it must pay for additional costs incurred by the NPS for managing the use.

NPS may implement a CUA management fee schedule, or standard CUA management fee, by assessing and documenting the average cost of managing the same or similar CUAs. NPS must maintain the supporting administrative record for fifteen years after it ceases using that CUA management fee schedule. The NPS must publish the established CUA management fee schedule on the applicable park website.

#### 11.6.2.2 Market Price Management Fee

Market price reflects the commercial value of the business opportunity. One method to calculate market price is to assess a fee based on the gross receipts earned as a result of doing business authorized by the CUA. The NPS uses the following tiered methodology to assess the market price management fee for CUAs, which is the same methodology used to assess franchise fees for small concession contracts (See Section 10.2.1.3):
<table>
<thead>
<tr>
<th>CUA Gross Receipts</th>
<th>CUA Management Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;$250,000</td>
<td>3% of gross receipts (minus application fee)</td>
</tr>
<tr>
<td>$250,000 to $500,000</td>
<td>4% of gross receipts (minus application fee)</td>
</tr>
<tr>
<td>&gt;$500,000</td>
<td>5% of gross receipts (minus application fee)</td>
</tr>
</tbody>
</table>

The above is a tiered fee best explained by example. Suppose a CUA holder earns $750,000 in gross revenue as a result of doing business authorized by the CUA. The NPS will charge 3% of gross receipts up to $250,000, 4% for the next $250,000, and 5% for the remaining $250,000, for a total CUA management fee of $30,000, minus the application fee.

When charging a market price management fee based on percentage of gross receipts, the combined charges for the application fee and the market price management fee may not exceed the above described limits. For example, the NPS may charge an application fee of $150 plus a 3% of gross receipts market price management fee. The CUA holder will deduct the $150 application fee from the 3% of gross receipts before remitting at the end of the season, so as not to exceed the market price. If the calculated market price fee is less than the application fee, the NPS retains the application fee.

Other methods of determining market price are to charge a per person fee or to assess the fees used in the surrounding market for management of similar services. For instance, if a neighboring municipality charges an entity $300 to conduct a yoga class in a city park, the NPS may adopt that $300 fee as the market price for similar services.

As stated above, the NPS must recover all costs associated with CUAs. Consequently, any market price management fee must be sufficient to recover all costs associated with managing the CUA. This includes utility costs and fair market value rent, if applicable. If the market price fee, calculated using any of the above methods, does not allow for full cost recovery, the NPS must default to the direct cost recovery method.

Park staff must notify the appropriate regional chief of commercial services by email and must receive concurrence before implementing a CUA market price management fee. Generally, the NPS should notify current CUA holders at least 180-days prior to implementation of a market price management fee based on percentage of gross receipts.

11.6.3 Reviewing Costs and Fees

The NPS must review the costs associated with administering and managing CUAs at least every two years to account for inflation, changes in wages, changes in personnel involved in the CUA process, and changes in related costs, and adjust all fees to assure recovery of full costs. The superintendent must approve the fee review and any fee changes in writing before implementing any fee change.

When the NPS determines it will increase the CUA application or management fee schedule 10% or more above existing fees, park staff must notify current CUA holders of the fee change in writing and publish the new fee schedule on the park website at least 60 days before the next CUA application period begins. Park staff must review the costs well ahead of this deadline to ensure timely implementation of any changes.
11.6.4 Collecting Fees

The NPS may accept payment through any of the following methods (in order of preference): Pay.gov or other approved online methods, credit card, check, or money order. The superintendent also may require a performance bond to cover post-activity clean-up or restoration when those costs are significant or difficult to calculate precisely in advance.

As stated above, the NPS must collect the non-refundable application fee with the CUA application and deposit it upon receipt. The NPS collects CUA management fees either at the time of application if based on an established fee schedule, in installments as the NPS incurs management costs, or after the commercial activity has occurred at the same time as the submittal of the annual report.

The NPS may issue a bill of collection to collect any overdue costs. CUA applicants must provide their Employer Identification Number (EIN) and park budget offices may use this information for overdue fee collection. The NPS must deny subsequent CUA applications if a CUA holder has overdue CUA fees.

11.7 CUA Accounting

The NPS must deposit and expend CUA funds from the following CUA account:

- Fund: XXXP1036C4 to signify a no-year fund.
- Functional Area: PROCX7X04.XZ0000.
- WBS assigned at the park level

In cases where the regional office manages the CUA application process, the budget office deposits the application fees into the regional account and deposits management fees into specific park CUA accounts.

The NPS may carry over revenues into future fiscal years when it does not expend all CUA fees by the end of the fiscal year. Regions will sweep these carryover balances at the end of the fiscal year and reallocate the funds at the beginning of the next fiscal year subsequent to a WASO Commercial Services Program review to ensure compliance with expenditure guidelines.

11.8 CUA Fund Expenditure

The NPS has two categories for priority use of CUA fees. The NPS must meet all funding needs in Category 1 before spending on Category 2 needs.

Category 1 Expenditures

The 1998 Act directs the NPS to collect a reasonable fee to recover administrative and management costs associated with the CUA program. Examples of appropriate spending include:

- Account reimbursement for permanent personnel costs for staff assigned to administer or manage uses authorized by CUAs
- Personnel costs for temporary, term, or seasonal staff assigned to administer or manage uses authorized by CUAs
- Costs of official travel and training for staff assigned to administer or manage uses authorized by CUAs
- Material and supply costs for CUA program, including postage and printing, equipment
purchase or rental, computers, etc.

Costs associated with preparation, review, and distribution of documentation of environmental and cultural compliance

Reimbursement of costs related to utilities provided directly to CUA holders

Other spending directly tied to CUA program cost recovery

**Category 2 Expenditures**

The NPS may expend CUA fees on Category 2 funding needs only after fully funding Category 1 expenses. Category 2 expenditures include projects designed to 1) provide mitigation for impacts associated with uses authorized by CUAs use and 2) improve or enhance the experience of park visitors.

The WASO budget office has determined there is no need to enter projects fully funded by CUA funds into the Project Management Information System (PMIS). When projects are partially funded by CUA funds, park staff may indicate CUA fund expenditure as “other fund.”

**11.9 CUA Insurance**

CUA holders must have commercial general liability insurance as well as other insurance coverage specific to the commercial operation authorized. The NPS must identify the coverage types and required minimum insurance coverage amounts prior to CUA issuance to ensure a CUA holder has the ability to: a) cover claims for bodily injury, death, and property damage arising from any act or omission of the operator; and b) protect the government against potential liability for claims based on the operations of the operator.

The NPS sets minimum insurance requirements in an amount that should address claims related to a particular service or activity. CUA applicants, however, must consult with their own insurance brokers and secure insurance policies sufficient in scope to cover the potential risks of their specific business operation.

Park staff include park-specific insurance requirements as an attachment to the CUA application. CUA liability insurance policy requirements typically will not change during the term of the CUA. CUA holders who wish to add services must apply for a new CUA and obtain any additional insurance required for that authorization.

The NPS has established the following liability insurance requirements:

- Liability insurance policies must name the United States of America as additional insured.
- Insurance companies must have a rating of at least A- by the most recent edition of A.M. Best’s Key Insurance Reports (Property-Casualty edition) or similar insurance rating companies (Moody’s, Standard and Poor’s, or Fitch). This rating must be noted on the certificate of insurance or provided in a separate document with the submission of the CUA application.

**11.9.1 Commercial General Liability Insurance**

For commercial general liability insurance, the NPS has established a $500,000 per occurrence minimum; however, some activities with increased risk potential may require increased coverage. The superintendent ultimately determines the per occurrence minimums and sets those minimums in an amount that addresses claims related to a particular service or activity.
The NPS has established approved minimum commercial general liability coverage for recreation-based services that also apply to CUAs for similar services (See Section 4.3.8). Park staff may contact the regional or WASO CUA coordinator for assistance in determining insurance policy minimums.

11.9.2 Other Types of Liability Insurance

Commercial Automobile Liability and Physical Damage Insurance

If a CUA holder transports passengers or uses a vehicle in the performance of the service specifically authorized by the CUA, they must obtain commercial automobile liability and physical damage insurance. This ensures the CUA holder possesses the financial capability to cover claims for bodily injury, death, and property damage arising from the use of a vehicle. If the CUA holder does not use a vehicle as described above (e.g., uses a vehicle to meet clients within the park and that specific use is not identified in the CUA), commercial automobile liability insurance is not required.

Commercial auto insurance policies have three basic components: (a) physical damage insurance, which includes collision insurance; (b) liability insurance, which includes coverage for bodily injury, property damage, uninsured motorists, and underinsured motorists, and; (c) other coverage, which includes medical payments, towing and labor, rental reimbursement, and auto loan coverage.

Commercial automobile insurance coverage types are identified by auto designation symbols (1-9). Each symbol represents the type of vehicle protected by the applicable automobile liability policy. CUA insurance certificates typically will reflect one or more of the following symbols:

- Symbol 1, “Any auto” provides broadest coverage; covers any auto.
- Symbol 2, “Owned autos” provides coverage only for vehicles owned by the CUA holder, including those acquired after the policy begins.
- Symbol 7, “Specified auto” provides coverage for vehicles listed on the insurance policy.
- Symbol 8, “Hired autos” provides coverage only for autos leased, hired, rented, or borrowed by the CUA holder. It does not include autos leased, hired, rented, or borrowed for use by an employee, partner, or member of an insured’s household.
- Symbol 9, “Non-owned autos” provides coverage for autos that the CUA holder does not own, lease, hire, rent or borrow, but are used for business purposes.

Currently, the commercial automobile liability insurance coverage requirements for interstate transport of passengers by CUA holders are:

<table>
<thead>
<tr>
<th>Commercial Vehicle Insurance Interstate Passenger Transport</th>
<th>Minimum per Occurrence Liability Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 6 passengers</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>7-15 passengers</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>16-25 passengers</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>26+ passengers</td>
<td>$5,000,000</td>
</tr>
</tbody>
</table>

The commercial automobile liability insurance requirements for interstate operation of autos used in performance of the service in the park, but not to transport passengers, are:
### Commercial Vehicle Insurance

#### Interstate Operations (No Passenger Transport)

<table>
<thead>
<tr>
<th>Minimum per Occurrence Liability Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small fleet vehicles under 10,001 pounds</td>
</tr>
<tr>
<td>Fleet vehicles 10,001 pounds or more</td>
</tr>
</tbody>
</table>

The NPS has not established commercial automobile liability minimums for intrastate auto use by CUA holders because each state has unique rules and regulations. Park staff must refer to individual state requirements and use those state requirements or the interstate requirements, whichever are greatest.

### Protection & Indemnity (P&I) Vessel Insurance

CUA holders authorized to transport passengers aboard or use a motor vessel may have P&I vessel insurance to cover claims for bodily injury, death, and property damage arising from the use of the vessel as an alternative to commercial general liability insurance (see Section 11.9.1). NPS has established a $500,000 per occurrence minimum for P&I coverage. The CUA holder is responsible for ensuring its P&I coverage is sufficient in scope to cover the potential risks.

CUA holders who have P&I insurance do not need to purchase commercial general liability insurance if the services authorized by the CUA occur solely onboard the vessel. If the services authorized by the CUA include off-vessel activity, the CUA holder must obtain shore excursion coverage as part of the P&I policy or obtain commercial general liability insurance at the limits set out above to cover those activities (See Section 11.9.1).

### Aircraft Liability Insurance

CUA holders authorized to transport passengers by aircraft or use an aircraft in the park are required to obtain aircraft liability to cover claims for bodily injury, death, and property damage arising from the use of the aircraft. NPS has established a $1,000,000 per occurrence minimum for aircraft liability coverage. The CUA holder is responsible for ensuring its aircraft liability coverage is sufficient in scope to cover the potential risks.

CUA holders who have aircraft liability insurance do not need to purchase commercial general liability insurance if the services authorized by the CUA occur solely aboard the aircraft. If the services authorized by the CUA included off-aircraft activity, the CUA holder must obtain additional commercial general liability insurance to cover those activities.

### Property Insurance

In limited circumstances, parks may assign the use of park property to a CUA holder. In those circumstances, the CUA holder must secure property insurance to provide the financial means for CUA holders to repair or replace damaged park property within their care and control. The NPS will provide the Insurance Replacement Values for the structures.

### Umbrella Liability Insurance

Excess, or umbrella, liability insurance is designed to provide protection against catastrophic losses and generally is written in addition to other primary liability insurance policies such as commercial general liability, commercial automobile liability, and employer’s liability.
If the CUA holder’s primary insurance policy does not meet the NPS established limits for commercial general liability, property liability, or commercial automobile liability, the CUA holder may obtain additional coverage through an umbrella liability insurance policy. Oftentimes, the umbrella policy is less expensive than purchasing the full required liability insurance under a primary policy.

An umbrella liability insurance policy only extends the limits of the primary policy. For example, if a CUA holder is required to provide commercial general liability and commercial automobile liability and they only have the auto policy, an umbrella policy cannot replace the required commercial general liability policy. The table below demonstrates adequate umbrella liability coverage:

<table>
<thead>
<tr>
<th>Required Liability Insurance</th>
<th>Required Coverage per Occurrence</th>
<th>Primary Policy Coverage per Occurrence</th>
<th>Umbrella Policy Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability</td>
<td>$1,000,000</td>
<td>$500,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Commercial Automobile Liability</td>
<td>$1,500,000</td>
<td>$1,000,000</td>
<td></td>
</tr>
</tbody>
</table>

**Professional Liability Insurance**

Professional liability insurance (PLI) protects professionals such as accountants, lawyers, and physicians against negligence and other claims initiated by their clients. Professionals who have expertise in a specific area require this type of insurance because commercial general liability insurance policies do not offer protection against claims arising out of business or professional practices such as negligence, malpractice, or misrepresentation. NPS does not require or accept PLI for CUAs.

### 11.9.3 Required Certificate of Liability Insurance

CUA applicants must provide proof of required liability insurance coverage upon application submittal, and CUA holders must provide proof of renewed coverage through the CUA term. Typically, that proof is provided through an Acord 25 Certificate of Liability Insurance although NPS may accept other insurance certificates provided they contain the information included on the Acord 25 certificate.

The insurance certificate must:

- Be written in English with monetary amounts reflected in U.S. dollars ($)
- Show the current policy period
- Name as insured the business or person applying for the CUA
- Name the United States of America as additional insured\(^3\)
- Name as additional insured any third-party doing business under the CUA
- Reflect at a minimum the coverage amount required in the CUA application
- Show any additionally required insurances in the amount required

\(^3\) The CUA applicant also may list the National Park Service and the NPS unit as additional insureds in addition to listing the United States of America.
Include insurance provider rating (may appear in an additional document)

11.9.4 Visitor Acknowledgment of Risk

NPS does not allow CUA holders to request or require visitors to sign a waiver of liability, insurance disclaimer, or indemnification agreement. The NPS must ensure CUA holders who violate this condition discontinue the practice immediately or must suspend the CUA.

The NPS allows CUA holders providing high-risk commercial services to advise visitors of risks associated with the activity using a visitor acknowledgement of risk form (VAR). A VAR can describe the inherent risks of the activity and warn visitors of those risks. The VAR guidance for concessioners applies to CUA holders (See Section 6.9.5).

11.10 Limiting CUAs

The NPS must manage CUAs to protect the resources and values of the park unit and the purposes for which it was established, as well as protect visitors and provide for their enjoyment of the park unit. To meet this obligation, NPS may manage CUA activity through limiting conditions or by limiting the number of CUAs issued. The decision to limit CUAs must be based on reasoned, defensible logic. The reasons the NPS may consider limiting CUA operations include, but are not limited to, the following:

- Implementation of appropriate park management plans
- To evaluate resource impacts
- Implementation of carrying capacity decisions
- To ensure protection of sensitive ecosystems
- To provide for visitor safety
- To enhance visitor experience
- To balance visitor access between CUA and non-CUA users

The easiest way to limit CUAs is to specify conditions that limit the activity, rather than limiting the number of CUAs issued, by establishing operational requirements that limit use and impacts. Limiting the number of issued CUAs tends to be more complex and usually involves a time-consuming competitive process that must be repeated at least every two years.

When the need to limit use arises, the NPS must consider if the extent of the use indicates the service has become necessary and appropriate justifying conversion to a concession contract.

11.10.1 Limiting CUA Activities through Conditions

This management strategy allows the NPS to limit the authorized activity by establishing CUA conditions designed to control use and impact. The NPS may specify conditions to manage CUAs by limiting the following:

- The number of user days
- The operating season
- Operating dates
- Operating times
- Operating location
- Number of participants or group size
- Other parameters for the commercial activity or service
Generally, establishing limiting conditions alone does not require a formal planning process except when the CUA conditions restrict public visitor access to a park. Before implementing new limiting conditions on CUA holders’ activities or operations, however, the superintendent should prepare a written memorandum to the file describing the conditions or circumstances that require or justify the limitations and should notify all CUA holders in writing of the limitations.

11.10.2 Limiting the Number of CUAs

Generally, unless the NPS formally determines to limit the number of CUAs issued, there are no limits to the number issued. The decision to limit the number of CUAs is delegated to the superintendent, who may base that decision on park enabling legislation, NPS Management Policies, and existing planning documents. To ensure consistency, park staff must consult the regional chief of commercial services when limiting the number of CUAs.

Newly Proposed Commercial Services

The NPS should evaluate potential impacts of newly proposed commercial services and may determine to limit the number of CUAs issued for such services during the initial compliance process. This process allows the NPS to evaluate the resource and visitor impacts of the commercial service to ensure the use is appropriate (see Section 11.3). When the NPS wants to evaluate the financial feasibility of a newly proposed commercial activity, it may issue a limited number of CUAs on a short-term basis to monitor the activity and assess market demand. The NPS does not have to allow every proposed activity, even in limited numbers.

Limiting Existing Commercial Services

Limiting the number of CUAs after the use is established typically requires a more intensive process. In most cases, the NPS must rely on an existing or new planning process to determine the appropriate number of commercial operators. The level of required planning depends on the commercial service, applicant demand for CUAs, potential impacts to visitors, and existing planning documents. The NPS must evaluate possible impacts on private individuals, administrative use, and commercial use and consider balancing the use to accommodate a mix of private, educational, commercial, and administrative users.

The NPS may temporarily cap the number of issued CUAs during the planning process provided the planning effort is ongoing. During the planning process, the NPS should award the limited number of CUAs through a competitive process if the number of applications received exceeds the number of available CUAs. Only the Associate Director, Business Services, may approve an exemption from this competitive process. The superintendent should consult with the regional chief of commercial services to develop the exemption request. The exemption request should be forwarded to the Associate Director, Business Services, through the Regional Director with a copy provided to the WASO CUA program manager.

11.10.3 Competing and Awarding a Limited Number of CUAs

The NPS must develop a specific process to issue the available authorizations when it limits the number of CUAs. The following criteria apply service-wide except for certain operators in the Alaska Region covered by ANILCA. Specific processes include:
Competitive Process

The NPS may use a competitive process similar to concession prospectus issuance and evaluation. Proposal packages for CUAs can use a simplified version of those used for concession contracts.

Park staff must develop the solicitation in consultation with the regional chief of commercial services, and the appropriate Office of the Solicitor should review initial competitive processes, including the solicitation, for legal sufficiency. The solicitations must:

♦ Describe the opportunity and the current use.
♦ Identify operating conditions necessary to protect the resource and provide a quality visitor experience.
♦ Identify minimum qualifications (training, certifications, experience, etc.).
♦ Provide a standard operating plan or require the CUA applicant to provide an operating plan as part of the application package.
♦ Fully describe the rating criteria, evaluation process, and scoring methodology. Park staff must develop rating criteria and consider basing rating criteria on applicant response to resource protection, visitor safety, and relevant experience questions, at a minimum.
♦ Identify the CUA application fee amount and describe the CUA management fee calculation method and projected due date. The NPS must include in the CUA application fee the selection process costs.
♦ Notify potential applicants of the rate approval process if applicable. Commercial providers may inflate rates when an activity is in high demand and a monopoly or near monopoly exists. In such cases, the NPS ensures CUA holders provide authorized services at reasonable rates by approving the rates charged. Park staff must refer to Commercial Service Rate Administration Guidelines and work with the regional chief of commercial services when approving rates.
♦ Describe any additional reporting requirements. The NPS may require monthly reporting to effectively monitor impacts and determine whether further limitations or conversion to a concession contract is necessary.

The NPS should directly notify current operators and publicize the opportunity on the park website and through a press release, at a minimum. Depending on the type of commercial activity and potential interest beyond the local area, the NPS may post a notice on SAM.gov. Park staff must consult with the regional chief of commercial services to determine regional notification requirements.

The project leader for the competitive process must review each application to ensure it meets the minimum qualifications identified in the solicitation such as required signature, licenses, and insurance certificates. NPS then evaluates the qualified applications.

The NPS must convene a panel of qualified individuals, consisting of primarily NPS staff, to evaluate the qualified applications. During the evaluation process, the panel will use the rating criteria and process described in the solicitation to score and recommend to the superintendent which applicants should receive the limited number of CUAs. Non-NPS staff panel members may assist with the evaluation process but are not allowed to participate in score assignment. The NPS may consider selecting a stand-by operator and offer the opportunity to this stand-by operator without further competition should an operator awarded a CUA choose not to operate.
A CUA holder may not transfer or assign its CUA to another operator. The NPS has the option of not issuing a “replacement” CUA or issuing the CUA through another competitive process. On a case-by-case basis the NPS may consider redistributing use allocations (i.e., park area entrance, user day, etc.) to other CUA holders in lieu of competing and awarding additional CUAs.

Random Selection or Lottery Process

The NPS also may limit the number of CUAs issued through a random selection or lottery process when the training or skill requirements are not significant and generally are consistent among applicants. The NPS should directly notify current operators and publicize the opportunity on the park website and through a press release, at a minimum.

Prior to the random selection or lottery process, park staff must ensure all applicants entered into the selection process have minimum qualifications identified in the solicitation. The NPS may consider selecting a stand-by operator in case one of the applicants selected is not able to provide the service.

The NPS may consider other processes with the concurrence of the regional chief of commercial services. Any such process must be fair, equitable, and transparent to the public.

11.11 CUA Suspension and Revocation

The NPS may terminate a CUA upon violation of any of the CUA conditions or at the discretion of the NPS. While this stipulation is a standard condition included in the CUA application, park staff may develop a CUA suspension and revocation process consistent with this standard condition and provide that process to CUA applicants and CUA holders by posting it on the park website. This encourages transparency and ensures fair and equitable suspension and revocation practices.

A CUA suspension and revocation process must include specific administrative actions NPS will take as a result of a CUA holder violating CUA conditions. These actions should be based on the severity of the violation. For example, a first offense of administrative non-compliance (e.g., failure to submit activity reports on time) may lead to a written warning, repeated violations leading to a potential suspension and even revocation. A more severe first violation (e.g., illegal activity or gross negligence that puts visitors or resources at risk) may result in immediate suspension or revocation, and potential denial of subsequent CUA applications.

If NPS believes a CUA holder has violated a CUA condition, the superintendent or his/her designee must notify the CUA holder of administrative actions to be taken, in writing, as soon as possible. If an employee of the CUA holder, but not the CUA holder itself, has violated a CUA condition, the NPS must identify the employee in the notification to the CUA holder. A suspension or revocation may apply to all services authorized under the CUA; however, a more limited action may be appropriate as circumstances warrant.

The NPS should provide the CUA holder an opportunity to explain the circumstances that led to the violation and an opportunity to take corrective action to avoid future violations before the NPS takes final administrative action at the park level. This does not preclude immediate suspension or revocation of the CUA when warranted as described above.

Park staff should notify the regional CUA coordinator when a CUA holder has been suspended or a CUA has been revoked.
11.12 CUA to Nonprofit Organizations

Nonprofit organizations may conduct commercial activities on NPS-managed lands or waters. A nonprofit organization is an organization that has been determined by the Internal Revenue Service to be exempt from Federal income taxation as a nonprofit organization under the Internal Revenue Code.

In accordance with the 1998 Act, a nonprofit organization is not required to obtain a CUA to conduct commercial activities in a park area unless the nonprofit organization derives taxable income from the activity. Under 36 C.F.R. § 5.3, however, nonprofits must have a permit, contract, or other written agreement to conduct business in a park area.

Notably, the 1998 Act does not prohibit the NPS from issuing nonprofit organizations CUA, and the NPS prefers to issue CUA to nonprofit organizations instead of special use permits to track commercial activities in parks through use of the annual CUA report.

If a nonprofit desires to commercially operate and refuses to apply for a CUA, it must submit a certified written statement under penalty of perjury to the park superintendent that it will derive no taxable income from its activities in the park area, and, if requested, further substantiate this statement to the satisfaction of the NPS by providing proof of nonprofit status. The NPS may consider this information and issue the nonprofit a special use permit (SUP) instead. The NPS must include in the SUP the same terms and conditions that would be required under a CUA, including liability insurance requirements, and may recover “all costs of providing necessary services associated with” the SUP under 54 U.S.C. § 103104.

Non-federal entities under cooperative agreements with assigned federal real property are required to obtain a permit when conducting commercial activities within or outside of the assigned area if those activities are not specifically authorized by the cooperative agreement. The NPS issues a CUA when those activities result in taxable income.

The legislative limit on gross receipts earned by entities issued in-park CUA does not apply to nonprofits when the nonprofit derives no taxable income from the authorized activity.