

## RM 48B Commercial Use Authorizations (CUA)

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### Chapter TBD - Limiting CUAs

#### Introduction

This chapter provides guidance on limiting the number of commercial use authorizations (CUAs) and on establishing conditions limiting CUA activity to mitigate existing or potential visitor and resource impacts. The authority is found at 54 U.S.C. § 101925 (PL 105-391 Sec 418(2)(A)).

*(2) Elements of authorization. The Secretary shall:*

*(D) have no authority under this section to issue more authorizations than are consistent with the preservation and proper management of park resources and values, and shall establish such other conditions for issuance of such an authorization as the Secretary determines appropriate for the protection of visitors, provision of adequate and appropriate visitor services, and protection and proper management of the resources and values of the park.*

The Service must manage CUAs to protect visitors and provide for their enjoyment of the resource, as well as protect the resources and values of the park and the purposes for which it was established. The Service must base decisions to manage CUA activity through limiting conditions or to limit the number of CUAs on reasoned, defensible logic. The Service may choose to limit CUA operations, including the number of CUAs, for the following reasons:

- To implement appropriate park management plans,
- To evaluate resource impacts,
- To implement carrying capacity decisions,
- To protect sensitive ecosystems,
- To provide for visitor safety,
- To enhance visitor experience,
- To balance visitor access between CUA and non-CUA users.

The Service may limit commercial activities with the potential to impair the visitor experience and park resources and values in several ways. The easiest way to limit CUAs is to specify

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conditions that limit the *activity* not the actual number of CUAs by establishing operational requirements that limit use and impacts.

The more difficult option is to limit the number of issued CUAs. Generally, this will involve a time consuming competitive process repeated at least every two years. If by managing permit conditions the Service can accomplish management goals, while providing an appropriate level of service, the Service should do so before establishing a limit on the number of CUAs allowed for an activity or an area.

## Limiting CUA Activities through Conditions of the Authorization

This management strategy allows the Service to limit the authorized activity by establishing CUA conditions designed to control use and impact as provided in Public Law 105-391 § 418. The Service may specify conditions to manage CUAs by limiting the following:

- The number of user days or hours,
- The operating season,
- Operating dates,
- Operating times,
- Operating location,
- Number of participants or group size,
- Other parameters for the commercial activity or service.

Examples of limiting CUA activities through conditions include:

- Limiting a wedding planner to arranging weddings at a specific park location to two weekend days per month.
- Limiting float plane landing areas to lakes greater than 600 feet in length.
- Limiting paddlecraft launches to 45 launches per day (15 launches at one time, at the prearranged launch times of 7:00 am, 8:00 am, and 9:00 am).

Generally, this management strategy does not require formal planning except when the CUA conditions restrict public visitor access to a park. When the need to limit use arises, the Service should consider if the extent of the use indicates the service has become necessary and appropriate justifying conversion to a Category III concession contract.

## Limiting the Number of CUAs

Generally, unless the Service 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 and must be based on park enabling legislation, NPS Management Policies, and existing planning documents, and be reviewed through appropriate compliance processes. To ensure consistency, park staff should consult the regional concession chief for additional guidance.

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### *Newly Proposed Commercial Services*

Newly proposed commercial activities covered by CUAs likely will need some level of compliance to determine if the activity is appropriate. The Service should evaluate potential impacts and determine limits during this initial compliance.

When the Service wants to evaluate the feasibility of newly proposed commercial activities, it may issue a limited number of CUAs on a short-term basis to monitor the effects of the activity including resource and visitor impacts and market demand. The Service does not have to allow every proposed activity even in limited numbers.

### *Existing Commercial Services*

Limiting the number of CUAs after the use is established requires a more intensive process. In most cases, the Service must use a separate 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 Service 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 Service may temporarily cap the number of issued CUAs during the planning process provided the planning effort is ongoing. During the planning process, the Service must award CUAs through a competitive process. The Service cannot limit the CUAs only to existing operators unless no one else applies.

## **Considerations When Limiting the Number of CUAs**

**CUA Application** - The solicitation for applications should reflect the specific commercial activity. It must include the current OMB approved application form, a description of the minimum qualifications of providers, a list of the rating criteria, and instructions to facilitate selection. The Service must objectively evaluate submitted applications. The regional concessions office can assist in determining selection criteria based on the following categories:

- Resource protection
- Visitor safety and quality of experience
- Relevant experience

**Advertisement of Opportunity** - The Service must notify current CUA holders and advertise the opportunity locally at a minimum. The Service may place a notice on the NPS Commercial Services website and in FedBizOps. A larger applicant pool increases the odds of receiving qualified applicants.

**Reasonable Rates** – Commercial providers may inflate rates when an activity is in high demand and a monopoly or near monopoly exists. When issuing a limited number of CUAs, the Service ensures CUA holders provide authorized services at reasonable rates by approving the rates charged. The Service must refer to Commercial Service Rate Administration Guidelines, available from the regional concessions program office, when approving rates. The Service must notify potential CUA holders of the applicable rate approval process prior to award of the CUA.

**Non-transferable** – CUA holders cannot transfer or assign CUAs to another operator. If the Service selected a stand-by operator it may offer the opportunity to this operator without further competition for the term of the original CUA. The Service has the option of not issuing a 'replacement' CUA or issuing the CUA through another competitive process. On a case by case basis the Service may consider reallocating use to other CUA holders in lieu of competing and awarding additional CUAs.

**Consider Concession Contract** - The Service should consider whether the high demand for the visitor service supports a determination that the service is necessary. In that case, the Service should consider issuing concession contracts instead of CUAs. Concession contracts have the benefit of longer terms and provide the Service more options to manage impacts and ensure high quality visitor services. Concession contracts may require more management time and expenses than CUAs, both from the operators and the NPS.

**Required Reporting** – The Service may require frequent reporting to effectively monitor impacts and determine whether further limitations or conversion to a concession contract is necessary. The Service may use the optional OMB approved Monthly CUA Report in addition to the required Annual CUA Report.

## Competing and Awarding a Limited Number of CUAs

If the Service determines to limit the number of CUAs issued for an activity, and appropriate planning documents support that determination, the Service must develop a specific process to issue the available authorizations. The following criteria apply service-wide except for certain operators in the Alaska Region covered by ANILCA. Specific processes include:

**Competitive Process** – The Service may use a competitive process similar to concession prospectus issuance and evaluation. CUAs, unlike concession contracts, cannot result in more than a minimal impact so the competitive process should be a scaled-down, simpler version of the typical proposal package for concessions contracts. The solicitations must:

- **Describe the opportunity, users, and current service providers.** Park staff should develop this document in consultation with the regional chief of concessions.
- **Develop minimum qualifications and/or standard operating plan.** Park staff should determine minimum qualifications (training, certifications, experience, etc.) and, if necessary, develop an operating plan as part of the competitive process. Alternatively, the Service may require the CUA applicant to develop an operating plan. The Service must identify operating conditions necessary to protect the resource and provide a quality visitor experience. For an initial competitive process, the appropriate Office of the Solicitor should review these documents for legal sufficiency.
- **Fully describe the rating criteria and evaluation process.** Park staff must develop rating criteria and should consider basing rating criteria on applicant response to resource protection, visitor safety, and relevant experience questions, at a minimum. The solicitation must describe the evaluation process.
- **Publicize the opportunity.** The Service must publicize the opportunity locally or regionally depending on the type of activity and potential interest beyond the local area. The Service may put a notice on the NPS Commercial Services website and post a notice in FedBizOps.
- **Competitive process cost recovery.** The Service must include selection process costs in cost recovery assessed to applicants.

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- **Evaluate the Applications.** The Service must evaluate applications to ensure each meets minimum qualifications. The Service must convene a panel of experts, generally consisting of park staff, to evaluate the qualified applications.

**Random Selection or Lottery Process** – The Service also may limit the number of CUAs through random selection when the training or skill requirements are not significant. The Service should consider selecting a stand-by operator in case one of the selected applicants is not able to provide the service. Prior to the random selection, park staff must ensure all applicants entered into the lottery process have minimum qualifications identified in the CUA application.

**Other Processes** – The Service may consider other processes with the concurrence of the regional chief of concessions. Any such process must be fair, equitable, and transparent to the public.