

RM 48B - Commercial Use Authorizations (CUA)

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Chapter TBD – Management of Commercial Use Authorization Fees

Introduction

This chapter provides guidance on how the NPS determines, collects, and credits fees associated with issuing Commercial Use Authorizations (CUA).

The authority for the NPS to recover and retain costs associated with managing CUAs is found at 54 U.S.C. 101925 (PL 105-391 Sec 418(2)(A)).

(2) The secretary shall:

(A) Require payment of a reasonable fee for issuance of an authorization under this section, such fees to remain available without further appropriation to be used, at a minimum, to recover associated management and administrative costs;

The above stated law gives the NPS the authority to collect fees for issuing an authorization to provide services to visitors. The NPS bases fee amounts on a determination of what is “reasonable”. Once collected, the NPS uses the fees first to pay for the costs incurred for administrative and management costs associated with that activity. Beyond that, the NPS must look to other sources to determine what constitutes a reasonable fee.

OMB Circular No. A-25 establishes federal policy and provides additional guidance on the scope and activities subject to user charges and the basis for setting those fees. It also provides guidance on the implementation and disposition of the fees collected. The following definition provides additional

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guidance on what constitutes a reasonable fee as either cost recovery or the market price. It also provides clear direction that CUAs, are in essence a business license to operate on NPS lands and gives the NPS authority to charge for such a license:

When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed **(to recover the full cost to the Federal Government for providing the special benefit, or the market price)**. For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service:

- (a) enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or **a license to carry on a specific activity or business or various kinds of public land use**); establishes Federal policy regarding fees assessed for government services and for sale or use of government goods or resources....”
- (b)under these business-type conditions, user charges need not be limited to the recovery of full cost and may yield net revenue.

OMB Circular No. A-25 Section 6 (a)(1)

Based on the specific language in the CUA authorizing legislation, the NPS must collect fees to pay for associated administration and management costs. In addition, the OMB Circular and the CUA authorizing legislation 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 can charge that higher amount and treat that higher amount as revenue. The fee NPS charges should be either the market price or the cost recovery fee and not two separate fees. The market price fee, however, must provide at a minimum for cost recovery.

Standard agency accounting procedures and internal controls apply to fees charged for CUAs. Additional information appears in a number of Treasury Regulations, AOC Guidelines and mandates (http://www.aoc.nps.gov/documents/ast_docs.html) and in Recreation Fee documentation. As a starting point, the AOC internal Controls Checklist contains a list of requirements. DO-22 Recreation Fees and the associated RM 22 Recreation Fees Collections provide specific guidance on how to manage fee collection activities. Accounting procedures and internal controls must assure NPS credits funds collected to the proper accounts.

This chapter does not apply to concession contract activities managed under the National Park Service Concessions Management Improvement Act (54 U.S.C. §§ 101911 et seq.), leases (P.L. 96-515, P.L. 105-391, 36 C.F.R. Part 18), Special Park Uses (54 U.S.C. §§100301 et seq.), or activities managed as living exhibits or interpretive demonstrations (54 U.S.C. § 101702), or the Federal Lands and Recreation Enhancement Act (16 U.S.C. 87, § § 6801 et. seq., FLREA).

Carefully review the policy guidance in this RM to confirm PL 105-391 Section 418 (54 U.S.C. §101925) applies to the proposed activity.

Determination of a Reasonable Fee for CUAs

OMB A-25 Circular defines a reasonable fee as either the fee to recover the full cost of providing the benefit or the market price. Parks may choose one of these two methods to establish a reasonable fee. Because the CUA law requires NPS, at a minimum, recover management and administrative costs, if NPS uses the market price method, the fee must sufficiently recover all of the costs. If the market price is lower than cost recovery, the Service must use the cost recovery method to set the fee.

The following sections further define how to calculate cost recovery and how to establish or determine an appropriate market price.

Cost Recovery for CUAs

Recoverable Costs

Recoverable costs are those costs directly attributable to the use of Federal lands for activities that convey special benefits to recipients beyond those provided to the general public. For CUA's, the NPS must recover the direct and indirect costs:

- incurred by the NPS that it would not have incurred had the commercial activity not taken place and;
- incurred when the NPS must take action to protect park resources or to ensure the safe completion of the activity authorized by CUA.

The NPS must itemize and document its calculations of these costs and make such calculations available for public release.

These costs include, but are not limited to:

Direct Cost:

- Direct personnel costs, including salaries and payroll benefits. This includes prorated monitoring costs for all of the field personnel assigned to the use, as well as all necessary support personnel such as managers and supervisors, clerical, dispatchers, maintenance, public health officers and any others involved. The recoverable costs also include any charges for premium pay and all miscellaneous personnel costs, including training.
- Material and supply costs, including supplies and materials, postage and printing, equipment purchase or rental, computers, and photographic reproduction, contractual services, etc.
- Costs of official travel associated with the use.

Overhead:

- Utilities costs, rent, administrative staff, equipment rental, fuel, maintenance, security, telephone, vehicles and other equipment use costs.
- Costs for preparation, review and distribution of documentation of environmental and cultural compliance. Commercial activities require compliance, which could include a simple categorical exclusion or may require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The NPS may pass these costs on to CUA recipients as a part of cost recovery.

The WASO Commercial Services Program has an Excel tool on the CUA Toolbox SharePoint site to assist park staff in calculating cost recovery. A cost recovery record to help the NPS calculate these application and management costs appears below.

The NPS may divide these recoverable costs into two or more separate fees:

Application Fee

The Application Fee is a mandatory, one time, non-refundable fee submitted by the applicant with the completed application. The NPS may not process the applications until it receives the application fee.

The NPS assesses the Application Fee to recover all administrative costs associated with reviewing and approving or denying applications for CUAs. The application fee represents the costs incurred by the NPS for:

- Preparation, mailing, and distribution of forms and correspondence including envelopes, paper, data processing, printing services, and postage and mailing.
- Initial review to make sure the applicant has supplied information sufficient to form a decision.
- Initial compliance (such as NEPA, NHPA, Wilderness Act, ESA). The NPS has the option of recovering the full cost of compliance or allocating a share of those costs against applications for similar activities. When the NPS thinks it will receive additional applications once it grants

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the first CUA for an activity, rather than charging the full cost of the compliance to the first requester, the NPS could charge a portion of that cost to the first applicant and assess a similar cost to future applicants until the NPS has recovered the full cost of compliance. The NPS also should allocate the cost of recertifying compliance among the current holders of CUAs for the service.

Depending upon the complexity of the activity, the NPS must establish and recover administrative costs either:

- (a) as a standard fee based upon the documented average cost of reviewing applications for simple, repetitive activities (Fee Schedule – see below); or
- (b) as a fee established on a case-by-case basis for unique, more complex activities that require extensive review and evaluation.

Park staff should inform an applicant for a CUA of the possible amount of the administrative costs associated with the NPS's management of the CUA program. Such notification could include a general statement indicating the time frame in which the NPS will bill such additional anticipated costs to the CUA holder.

Some CUAs are of such magnitude as to incur considerable additional administrative costs. In these cases, the NPS must calculate its actual costs associated with the administrative process of its decision and, if approved, preparation of the authorization. Ultimately, the administrative costs include all costs to the NPS from the time the first inquiry is received until the CUA is signed and issued.

In cases when the NPS decision making process will require a prolonged period and may require additional payment to cover administrative costs (as defined below), the NPS should make the possibility of such costs and requirement to pay such costs very clear to a prospective applicant during preliminary discussions. The NPS also should clearly explain that the applicant will be responsible for all such costs even if it subsequently withdraws its application or the NPS determines it necessary to deny the CUA.

Management Fee

NPS assesses a management fee to recover the actual costs incurred by all park divisions involved in support of the use, monitoring, clean up, and restoration after the use. These costs include charges for NPS personnel, equipment, and material. It also applies to day to day monitoring to enforce park regulations.

NPS must assess management fees separately from the Application fee. NPS may not assess management fees to CUA applicants who withdraw applications or are denied authorizations.

When the NPS cannot determine the actual costs in advance, the authorization must include a condition notifying the CUA holder that it must pay for the additional costs incurred by the NPS for managing the use.

Where NPS assigns a CUA holder facilities such as concession stands, retail outlets, instructional classrooms, or kitchen facilities, the NPS should recover utility costs commensurate with the use of the facility as directed by DO 35B.

Market Price for CUAs

The Market Price is a method of determining the value of the business opportunity (see Glossary). The market price may be established in several ways.

The market price most commonly is based on the gross receipts of the business. A financial analysis of small concession contracts has determined that the following charges are appropriate:

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- For Recreation Services contracts (float trips, river runners, guided tours, hunting guides, and saddle horse or mule and livery operations) that project annual gross receipts less than \$250,000, the minimum franchise fee is 3 percent of gross receipts or \$1,000 (or an appropriate amount determined by park management), whichever is more.
- For Hospitality Services contracts (lodging, food and beverage, retail, souvenirs and merchandise, rentals, RV parks and campsites, marina, transportation, auto gas and services, and other) that project gross receipts less than \$250,000, the minimum franchise fee is 5 percent or \$1,000 (or an appropriate amount determined by park management), whichever is more.
- Whenever circumstances justify a franchise fee outside the foregoing requirements, the regional office should complete a financial analysis to determine the appropriate franchise fee.

For Commercial Use Authorizations providing primarily recreation services, NPS may assess a reasonable fee of 3% of gross receipts for operations that gross less than \$250,000, or an appropriate minimum dollar amount (or an appropriate minimum dollar amount, 4% on gross receipts for the next \$250,000, (up to \$500,000) (or an appropriate minimum dollar amount) and 5% for the gross receipts over \$500,000.

As explained in the introduction above, NPS may charge only one fee, either Cost Recovery or Market Price. When charging an application fee and market price (i.e., a percentage of gross receipts collected at the end of the year), the combined charge should not exceed the above described limits. For example, NPS may charge a small tour guide service the application fee of \$150 plus a 3% of GR fee. The CUA holder should deduct the application fee from the 3% of gross receipts before remitting at the end of the season, so as not to exceed the market price.

NPS may also establish market price by analyzing what local or regional municipalities charge for similar permits (for example food truck licenses). The reasonable fee may be a small percentage increase over the calculated cost recovery, to allow the parks to respond to unanticipated cost increases.

In situations where NPS issues a CUA in conjunction with a Special Park Use permit (SUP), the cost recovered for the CUA may be a minor additional charge to the costs recovered for the SUP. This would apply events such as Farmers Markets, Music Festivals and Craft Fairs.

Park staff must notify the appropriate regional chief of commercial services and the WASO Commercial Services (Branch Chief, Planning and Development) before they initiate use of a percentage of gross receipts as part or all of a reasonable fee.

Fee Schedule

Sometimes at the park level, the cost recovery or market price determination of a recurring activity logically leads the NPS to establish a standard fee schedule. In such instances, the superintendent has the discretion to establish a record of documented costs of the same or similar past CUA-related activities. From that documented record, the NPS may establish a schedule of fees to charge for CUAs with similar circumstances. When the NPS establishes such a schedule, it must maintain the administrative records supporting that schedule for fifteen years after it ceases using that schedule.

The NPS must publish the established fee schedules on the applicable park website.

The NPS has considered developing a schedule of standardized CUA fees that would apply to similar services at all parks Servicewide, but rejected the idea as impractical due to the wide variations in conditions and requirements from park to park.

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Reviewing Costs and Fees

The NPS must review the actual costs associated with CUA's at least every 2 years to account for inflation, changes in wages or changes in personnel involved in the CUA process. NPS must document all labor costs and monitoring activities. NPS must review and adjust all fees to assure recovery of costs.

The superintendent must approve the fee review in writing before implementing any change to the CUA fees.

When the NPS determines it should increase the fee schedule 10% or more above existing fees, the superintendent must notify current CUA holders of the fee change in writing before the anniversary date of the authorizations and publish the new fee schedule on the park website at least 60 days before the effective dates.

Collecting Fees

The NPS must collect the non-refundable application fee with the CUA application. The NPS deposits the application fee upon receipt. The NPS collects the administrative and management fees either at the time of application, in installments as the NPS incurs the costs, or after the activity has taken place.

NPS also may charge the market price on a per-person basis. In this case, NPS would assess large groups of users a larger cost recovery because large users require more monitoring and services (such as trash pick-up and restrooms) than small users.

When the NPS cannot accurately calculate the management fees prior to the use, the NPS either may collect these costs and charges during the use or after it has concluded. As explained above, the NPS must estimate these costs and explain them to the CUA holder upon issuance of the CUA. The NPS may require a payment schedule in the issued CUA.

Methods of Payment

The NPS must accept payment through any of the following methods: Pay.gov or other online methods, cashier's check, bank check, money order, credit card, or at the superintendent's discretion, personal check. The superintendent may require a performance bond to cover post-activity clean-up and restoration when the NPS has estimated the management costs of a large or lengthy use may be significant and difficult to calculate precisely. The NPS also may issue a bill of collection for administrative and management costs incurred after the application process.

The NPS deposits the monies into the proper account. After final tabulation of actual costs and charges, should the payment exceed the actual costs and charges, the NPS will return any excess to the CUA holder according to standard cash collection and deposit procedures. The NPS should advise the CUA holder that it should not expect any reimbursement of excess charges until the use is concluded and the clean-up and restoration completed.

Some CUA costs are based on the level of activity. The CUA holder must report its level of activity at the end of the activity or season. When the NPS assesses a reasonable fee including cost recovery, it should require CUA holders to report visitor use and pay monthly or bi-monthly. The authorization must clearly explain how to calculate the costs and when the costs will be due. The NPS must issue a bill of collection to collect overdue costs.

Until September 30, 2015, funds are deposited as follows:

- Functional area PROIESUC1.33.0000 (the former PWE 319) - Used for all CUAs as defined here.
- These funds must be expended prior to the end of the fiscal year in which the funds are received.
- Those funds collected in excess of actual costs and not returned to the CUA holder are deposited in PSS00PRXR.XZ0000 (the former PWE 891).

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As of October 1, 2015, the CUA fees will become no year money. At that time, CUA Funds will be deposited as follows:

- Fund: XXXP1036C4 to signify a no-year fund. The current fund, 155P103631 will no longer be valid beginning in FY2016.
- Functional Area: PROCXCXC4.XZ0000.
- WBS may be assigned at the park level but is not required

Accounting

- NPS deposits all CUA funds into a single CUA account. It does not matter whether it is Cost Recovery, or Market Price or whether it is collected at the beginning of the season or at the end of the season.
- In cases where the Regional Office manages the CUAs, the budget office will deposit the Application Fees into the regional account and deposit any Administrative Fees (monitoring fees or management fees) into park CUA accounts.
- Park staff manage the CUA account at the park level. They determine what charges are appropriate and authorize division managers to charge against the account.
- The park staff must be able to identify the expenditure of these funds.

In compliance with the requirements of the Debt Collection Improvement Act of 1996, the applicant for a CUA must submit their Federal Tax ID Number (TIN). When necessary, park budget offices will use this information will be given to the park budget office for collection of overdue fees.

Expending (Administrative Controls)

The priorities for expenditure of CUA funds are: (in priority order)

- Operation of the CUA program: Expenditures related to administering and managing the CUA program.
- Long term monitoring and Mitigation resource impacts.
- other high priority park needs (except funding permanent positions)

Cost Recovery Record

The NPS must recover all of the following costs. The record should include specific itemization to support the general charges for divisions. For example, for Visitor Protection, the NPS should show the number of employees, their GS or WG wages including benefits, hours for each employee, travel for each employee, and specific supplies used. The NPS must maintain this administrative record for five years after expiration of the CUA.

Total Cost Of:

1. **Compliance (NEPA, NHPA, ESA, Wilderness Act etc.):** _____
2. **Environmental/Cultural Assessment or Impact Evaluation** _____
3. **Personnel (Include all personnel from each division, all grades, per hour, including benefits)**

	Regular	Overtime
Visitor Protection	_____	_____
Interpretation/Visitor Services	_____	_____
Resource Management	_____	_____
Maintenance	_____	_____
Administration	_____	_____
Concessions program	_____	_____
CUA program	_____	_____
Other	_____	_____

4. **Official Travel Associated With CUA:**

All Divisions _____

5. **Supplies, Equipment, Utilities and other Resources:
(Include the costs of resources used from each division)**

Visitor Protection	_____
Interpretation/Visitor Services	_____
Resource Management	_____
Maintenance	_____
Administration	_____
CUA program	_____
Other	_____

Glossary

Administrative Cost – The direct and indirect costs associated with issuance of an authorization. This includes administrative costs associated with preparing and issuing the CUA. It can also apply to administrative costs in managing the CUA activities and services.

Application Fee – The fee assessed to recover administrative costs associated with reviewing and approving or denying applications for CUAs. Costs incurred by the NPS from the time of the original CUA request until it issues or denies the CUA. The application fee is non-refundable.

Direct Cost – Costs for activities or services that benefit specific projects, e.g., salaries for project staff and materials required for a particular project.

Overhead- Indirect Costs for activities or services that benefit more than one project. Costs usually allocated indirectly include utilities, rent, audit, administrative staff, equipment rental, fuel, maintenance, security, telephone.

Maintenance Costs - Costs incurred by the NPS to provide services. The NPS must charge CUA holders for NPS services over and above normal operating costs of providing services to visitors. This may include extra trash collection, extra maintenance of picnic tables, restrooms and trails etc.

Market Price –The price for a good, resource, or service based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service.

- A. When a substantial competitive demand exists for a good, resource, or service, its market price will be determined using commercial practices, for example:
 1. by competitive bidding; or
 2. by reference to prevailing prices in competitive markets for goods, resources, or services that are the same or similar to those provided by the Government (e.g., campsites or grazing lands in the general vicinity of private ones) with adjustments as appropriate that reflect demand, level of service, and quality of the good or service
- B. In the absence of substantial competitive demand, market price will be determined by taking into account the prevailing prices for goods, resources, or services that are the same or substantially similar to those provided by the Government, and then adjusting the supply made available and/or price of the good, resource, or service so that there will be neither a shortage nor a surplus (e.g., campsites in remote areas). (As defined by OMB Circular NO. A-25 6(d)(2))

Monitoring Costs – Costs incurred by the NPS to check CUA holders for compliance with laws, regulations and the conditions of the permit, and well as CUA holders impacts to the park resources.

Reasonable - acceptable or normal practice; not expecting or demanding more than is possible or achievable

NEPA - National Environmental Policy Act

NPHA - National Historic Preservation Act

ESA - Endangered Species Act