

 United States Department of the Interior

NATIONAL PARK SERVICE

Great Sand Dunes National Park and Preserve

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**Great Sand Dunes National Park and Preserve Commercial Use Authorization Suspension, Restriction, Revocation and Application Denial Policy**

AUTHORITY: Public Law 105-391, Section 418; 16 United States Code (USC) 1 and 3 36 CFR Section 1.6 (g) and Section 5.3

EFFECTIVE DATE: September 15th, 2022

**National Park Service Policy:**

The requirement for a Commercial Use Authorization (CUA) is derived from the current general regulations of the National Park Service found in 36 CFR Sections 1.5(d), 1.6 (a), and 5.3. In compliance with 36 CFR, the terms and conditions of the permit are included in the application package and must be agreed upon by each applicant, as evidenced by the applicant’s signature.

Authority to revoke a permit is provided for via the signed statement on the permit. Failure on the part of the permittee to abide by the provisions of the permit is citable under 36 CFR Section 1.6 (g) and Section 5.3. and may result in revocation or denial.

**Purpose:**

This policy memorandum is intended to provide guidance regarding the actions taken in the event of a permittee violation (as defined in this policy). The Superintendent, at his or her discretion, may take actions other than those identified and retains the authority to immediately suspend, restrict or revoke a CUA or deny a future CUA application for any reason not covered by this policy memorandum.

**Definitions:**

* Holder/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 which has applied for or received a CUA.
* Employee - a person in the service of the Holder/Owner under any contract of hire, express or implied, oral or written, where the Holder/Owner has the power or right to control and direct the Employee in the work performed.
* Violations - Non-compliance with CUA terms and conditions or park regulation or policy; Payment of collateral, an accepted plea of nolo contendere, or a conviction in Federal or State court where a link exists between the offense and the business activity authorized, regardless of whether the violation occurred in a unit of the National Park System.

**Permit Conditions Related to Termination or Revocation:**

Authority to terminate or revoke a permit is provided for via CUA application and authorization condition #10 and the signed statement on both. Failure on the part of the permittee to abide by the provisions of the permit is citable under 36 CFR Section 1.6 (g) and Section 5.3. and may result in CUA suspension, restriction, revocation, or denial.

**Suspension, Restriction and Revocation:**

A CUA may be suspended, restricted, or revoked when the Holder/Owner or Employee commits a violation as defined above. The Superintendent will determine the appropriate administrative action regarding the violation based on the totality of the circumstances, including consideration of prior relevant violations. The following table provides a general guideline.

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| First Violation | A written warning at a minimum. May include a period of CUA suspension, restriction, or probation depending upon the violation. |
| Second Violation | CUA suspension or restriction for a minimum of 30 operating days and up to a maximum of 12 months. The restriction may continue into the next operating season and CUA applications for the next season may be denied until the suspension term limit is met. |
| Third Violation | CUA revocation for the remaining operating season and subsequent application denial for the next three operating seasons. |

**VIOLATION ACTION BY SUPERINTENDENT:**

A CUA may also be suspended or restricted when the Holder/Owner or Employee is under investigation or is charged for a criminal offense by state or federal authorities if a link exists between the offense and the authorized business activity, regardless of whether the offense occurred in a unit of the National Park System. A CUA may be re-instated or restriction lifted as a result of the final adjudication.

**CUA Application Denial:**

An application for a CUA may be denied if the Holder/Owner or any of the Holder/Owner’s current or proposed Employees committed a violation, as defined above, within three years of the date of application. Applicants denied a CUA due to previous violations may reapply at any time but are subject to an additional non-refundable application fee.

**Notification Process:**

If a Holder/Owner or any of the Holder/Owner’s current Employees has committed a violation, the Superintendent or his/her designee shall:

1. Notify the Holder/Owner of the violation in writing as soon as appropriate. This notification may include immediate suspension or restriction of the CUA. It is in the best interest of the National Park Service and the Holder/Owner that the Holder/Owner be made aware of the violation and be given an opportunity to take corrective action to avoid future violations and provide an explanation of the circumstances leading to the violation.
2. Notify the Holder/Owner in writing of the final administrative action including, but not limited to, suspension, restriction, revocation or denial of a future CUA or other National Park Service-issued permits. The Holder/Owner will also be notified of their right to appeal.
3. Notify the Intermountain Region and Washington Office CUA Coordinators as appropriate.

**Appeal Process:**

An appeal of the action may be made to the Superintendent in writing within 30 days of the action. Appeals must set forth the facts and circumstances the Holder/Owner believes support the appeal. The Holder/Owner may request a meeting to discuss the appeal with the Superintendent or his/her representative. The Superintendent may affirm, reverse, or modify the decision appealed and will set forth in writing the basis of the decision after considering the materials submitted by the Holder/Owner and the National Park Service record of the matter, and after the meeting with the Holder/Owner. A copy of the decision will be forwarded to the Holder/Owner.