United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, NW
Washington, DC 20240

Memorandum

To: NPS WASO Field Memos

From: Acting Associate Director, Business Services NICOLE WOODY Digitally signed by NICOLE WOODY Date: 2026.07.01 10:14:59 -04'00'

Subject: Indemnification Requirements for State Entities Holding CUAs Considering Exceptions in the EXPLORE Act

PURPOSE:
This memorandum updates National Park Service (NPS) policy regarding indemnification requirements for state entities as a condition for issuing commercial use authorizations (CUAs) following the enactment of the EXPLORE Act.

BACKGROUND:
The EXPLORE Act became law on January 4, 2025 (Public Law No. 118-234). Section 319 of the EXPLORE Act, 16 U.S.C. § 8548, specifically modifies indemnification requirements for certain CUA holders, as follows.

Sec. 319. LIABILITY.

(b) INDEMNIFICATION BY GOVERNMENTAL ENTITIES.—The Secretary concerned shall not require a State, State agency, State institution, or political subdivision of a State to indemnify the United States for tort liability as a condition for issuing a special recreation permit or commercial use authorization to the extent the State, State agency, State institution, or political subdivision of a State is precluded by State law from providing indemnification to the United States for tort liability, if the State, State agency, State institution, or political subdivision of the State maintains the minimum amount of liability insurance coverage required by the Federal land management agency for the activities conducted under the special recreation permit or commercial use authorization in the form of—

(1) a commercial general liability insurance policy, which includes the United States as an additional insured in an endorsement to the policy, if the State is authorized to obtain commercial general liability insurance by State law;
(2) self-insurance, which covers the United States as an additional insured, if authorized by State law; or
(3) a combination of the coverage described in paragraphs (1) and (2).

POLICY
Standard CUA conditions included for all CUAs in the online CUA system and the OMB-approved CUA application form (NPS Form 10-550) require that CUA holders indemnify the United States of America as a condition of CUA issuance. In other words, CUA holders must reimburse the United States for losses

suffered by the United States because of aa CUA holder's activities under a CUA.

As of the date of this memorandum, the specific "Liability and Claims" standard CUA condition reads:

> *This authorization is issued upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, injuries, or death to any person or persons or property of any kind whatsoever, whether to the person or property of the holder, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this authorization or occasioned by any occupancy or use of said premises or any activity carried on by the holder in connection herewith, and the holder hereby covenants and agrees to indemnify, defend, save and hold harmless the United States, its agents, and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.*

The EXPLORE Act prohibits NPS from requiring a state, state agency, state institution, or political subdivision of a state to indemnify the United States for tort liability as a condition of issuing a CUA so long as the state entity maintains the minimum liability insurance coverage required by the CUA via:

1) a commercial general liability policy naming the United States as additional insured in an endorsement to the policy,
2) self-insurance covering the United States as an additional insured, or
3) a combination of these two types of coverage.

As a result of the prohibition in the EXPLORE Act, NPS must remove the "Liabilities and Claims" standard CUA condition during the CUA application process if a state entity requests removal, meets the requirements above, and provides the NPS proof of conditions to warrant removal, including citations to relevant state law and, as applicable, certifications of insurance, etc.

NPS will not remove the "Liability and Claims" standard CUA condition when:

1) state law does not prohibit the entity from providing indemnification to the United States for tort liability,
2) applicable state law does not authorize the state entity to maintain the minimum liability insurance coverage required by the CUA through either (1) or (2) above, or a combination thereof, or
3) the state entity cannot prove it maintains the minimum liability insurance coverage required by the CUA through either (1) or (2) above, or a combination thereof.

The online CUA system will be updated to allow the CUA applicant to indicate if it is a state, state agency, state institution, or political subdivision of a state and if so indicated, will require the state entity provide proof of conditions to warrant "Liabilities and Claims" standard CUA condition removal during the application process. The CUA coordinator will evaluate the proof provided and when appropriate, will remove the standard CUA condition when issuing the CUA. The CUA coordinator should consult their respective regional CUA coordinator or WASO CUA Program Manager, who may in turn consult the Solicitor's Office, on any questions regarding the sufficiency of proof provided to remove the condition.

FOR FURTHER INFORMATION

For further information or questions on this policy, please contact Samantha Towery, WASO CUA Program Manager at samantha_towery@nps.gov or Kurt Rausch, Chief, WASO Commercial Services, at Kurt_Rausch@nps.gov.