

December 22, 2017

**Michael T. Reynolds
Acting Director
National Park Service**
Recreation Fee Program
1849 C Street NW,
Mail Stop: 2346
Washington, DC  20240

**RE: Proposed Changes to Road-based Commercial Tour Requirements and Fees**

Dear Acting Director Reynolds:

The American Bus Association appreciates the opportunity to comment on the National Park Service’s proposal to make changes to the “Road-based Commercial Tour Requirements and Fees”.

The American Bus Association (ABA) is the premier private bus and motorcoach industry trade association in North America. ABA has been in existence for over 90 years and is home to over 3,800 member companies and organizations and approximately 850 bus operator companies. ABA motorcoach operator members represent 65% of all of the equipment on the road. ABA members provide all manner of transportation services including: scheduled service, charter and tour, commuter operations and airport shuttle service. In addition, there are ABA members that provide all manner of services to bus companies and there are several bus manufacturer members of ABA. ABA members also include many tour, travel companies, convention and visitors’ bureaus (CVBs) destinations and attractions that receive motorcoach passengers, including other National Park Service (NPS) properties and concessionaires.

The proposal has raised alarm within the travel and tourism industry, particularly with regard to motorcoach tour operations in the Parks. Based upon a review of the proposals and accompanying material, the ABA highlights and enumerates the following concerns, which fall under the following headings: issues with the proposal process; insufficient data supporting the fee increases and issues with the specific proposals.

**Problems with the Proposal Process**

NPS’s proposed actions would significantly impact the public, yet the Agency does not appear to be complying with the Administrative Procedures Act (APA). In addition, in accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) makes the final determination as to the significance of each regulatory action and it has determined that this document is a significant rule and is subject to review. This action of considering changes to commercial use authorizations (CUAs) has happened before (2002) following the passage of the National Parks Omnibus Management Act of 1998 (PL 105-91) and followed a completely different procedure (67 Fed. Reg. 70899).

Executive Order 12866 also assigns the Office of Information and Regulatory Affairs (OIRA) the responsibility of coordinating interagency Executive Branch review of significant regulations before publication. This is to ensure agency compliance with the principles in Executive Order 12866, which include incorporating public comment, considering alternatives to the rulemaking, and analyzing both costs and benefits. On January 8, 2011, the President signed Executive Order 13563, which incorporates and builds upon the principles of Executive Order 12866, and which requires Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, innovation, job creation, and competitiveness. How does this proposal promote economic growth?

As mandated by the APA, major or significant actions that impact the public require interagency administrative review and as indicated by the estimated $70 million in revenue from increased fees alone, this action would qualify and likely break the $100 million threshold on the economy. The action in 2002 (RIN **1024–AC85)**, followed these procedures, but this recent action does not. This action should have been published in the Federal Register as other NPS actions regarding fees and permits have been (Fee Schedule for Commercial Filming and Still Photography Conducted on Public Lands, NPS-WASO-VRP-09328), should have been included in the Federal Docket system, should have undergone interagency review and included a cost/benefit analysis. Other similar assessments have been published in the Federal Register in the past (e.g. NPS–IMR–GRTE–19244 for Grand Teton), there has been no explanation as to why this proposal has not been treated in the same manner.

The proposal also failed to include a point of contact to direct questions and no public meetings or public outreach was conducted. Even individual park transportation management plans include public meetings and public outreach, yet this one did not. All proposals, issued through the Federal Register include points of contact for questions. This proposal falls short in this regard.

NPS’s actions are in direct conflict with NPS statements included in the 2/2015 IG Report, where NPS explicitly states that a “civic engagement strategy” was to be developed for NPS Management to “vet” any fee change proposals with the industry – yet no industry outreach was ever conducted.

**Insufficient Data Justifying a Fee Increase**

The US Department of the Interior’s Inspector General published a report on the NPS’s park fees in February of 2015 (<https://www.doioig.gov/sites/doioig.gov/files/CINNPS00122013Public.pdf>). That review, which analyzed both the present day collection and future projected revenues from fee increases recommended a much lower fee increase for motorcoach or bus commercial tour fees. That review recommended a 30% increase, the NPS’ proposal proposes a fee increase that during peak periods tops 400%. What is the justification for this scale of increase? Not only is there no cost benefit analysis, which accompanies all regulatory proposals that would impact the public to this degree include such an analysis and explanation behind the methodology for such a fee increase. Even Duke University published a report (Factor, [https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/397/MP\_sdf9\_a\_200709.pdf%3Bsequence=1](https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/397/MP_sdf9_a_200709.pdf%3Bsequence%3D1)) on park fee increases, actually projected a decrease in park visitation. ABA would propose that a similar study be produced on the proposed increases. In addition, the study found that a majority of the parks were not even collecting the currently approved fees. ABA would further propose that a study be initiated to compare the management of state parks versus the national parks, as a similar maintenance backlog and need for significant fee increases is not being experienced by the state parks.

**Specific Problems with the Proposal**

The changes outlined in the NPS proposals are extreme and go beyond identified practices and recommendations contained in the 2/2015 IG report, without any justification. For example: although NPS has authority for periodic adjustments, it has taken no action since 1998 and is now attempting to make up for its dilatory stance by proposing a significant increase, even going beyond its estimate of a warranting a 30% increase in commercial bus tour fee rates.

There is no discussion of cost/benefit analysis, or explanation of how the new fee structure and policy changes were derived. The proposals fail to explain how the proposed fee increases and policy changes to the CUA program, are tied to actual costs incurred by NPS.

There is no budgetary explanation to justify the fee increases or policy changes in the proposal, making the leap from the current practice of some parks opting for commercial bus tour operators to either obtain a CUA or pay a fee, to now a mandating a requirement that such operators must not only obtain a CUA at one cost, but then also later pay additional fees based on passenger counts, in addition to also paying entrance fees. Amazingly, NPS tries now to justify the CUA as being mandated by law – yet, since 1998 it is clear they have not followed their own statutory authority. Or, alternatively, what authority was the NPS operating under previously, when parks had an option to require CUA or fees? As was pointed out in the Duke study, fees are not even collected at the majority of national parks.

The purpose of the CUAs was “to recover the costs of administering the fee.” (IG Report 2/2015) Yet, without any form of budgetary justification to support its action, the NPS’s proposed new CUA fee structure practice, appears to go far beyond its initial purpose. The NPS proposals also appear to conflict with its grant of authority to issue fess, as the structures proposed appear to impose multiple layers of fee structures on the tour community. Specifically, the proposals appear to be in conflict with 16 USC 6802(c), the recreation fee authority, which authorizes it to collect fees, as mandated by the Federal Lands Recreation Act (Public Law 108-447): *“The Secretary shall establish the minimum number of recreation fees* ***and shall avoid the collection of multiple or layered recreation fees for similar uses, activities, or programs****.”* Currently, NPS policy is to not charge a fee for visitors under 16. However, under the proposed new CUA structure, related to the park management fee component, there is no distinction for the ages of visitors, as all visitors must be assessed a $5 fee. As all passengers on commercial tours would now be assessed through the annual per passenger fee, these aforementioned visitors under 16 years of age who were previously exempt from all park fees would now be assessed. There is no provision for companies reporting the annual per passenger counts to include such “exempted” passengers.

The NPS CUA proposal, specifically, seems wholly inefficient (and again, wholly unjustified, from a budgetary standpoint) in terms of requiring a separate CUA for each individual park, per commercial tour operator. For example, each park is authorized to have its own individual CUA program, and there is no requirement for uniformity between the programs or even terms of CUA term length, it is left entirely to the discretion of the individual parks.

ABA would propose a national CUA program with centralized management with coordination and visits across the national park system organized within NPS headquarters rather than forcing motorcoach and tour operators to have to shoulder the burden of managing individual CUA terms and agreements at multiple parks. Not to mention the required reporting associated with these CUAs. With additional proposals from individual parks, such as the recent traffic management plan from Arches National Park, individual CUAs will have specific fees and park management plans (such as park arrival times and parking plans) that will impose a significant burden on small businesses. This evaluation is something that interagency review would capture.

In addition, as pointed out in the Duke study, the number of parks collecting entrance fees has actually decreased from 2008-2015, yet the number of park units added to the national inventory has increased, at a faster rate than anytime in NPS history (30 new units in that period). Such metrics suggest, that prior to proposing such significant increases and changes to fee structure, NPS should be required to better assess its current management of park assets and revenue streams, before it considers imposing greater burdens on the publics, for whose benefit the park system exists. The lack of a formal or periodic review process was one of the major problems found in the IG Audit.

Also, specific to the existing CUA agreements, EIN number and state business license number requirements in the application would seem to discriminate against non-US based companies. Lots of international tour operators should seem to be required to have CUAs based on the criteria and lots of Mexican and Canadian bus companies visit National Parks, in addition to thousands of international tour operators who advertise national park visits as part of their tour packages. This proposal does not account for those entities and contradicts national policy such as Brand USA’s international advertising program, which seeks to encourage international visitors to the United States and to visit our national parks (a specific advertising plank of the international program). If international tour operators cannot even receive CUAs, it would seem to discourage the NPS’ intent with these proposals.

Understanding which entities are required to obtain CUAs is a key tenant to complying with these proposals. As written, there will be a conflict where as both a tour operator who advertises trips to national parks and motorcoach operators who operate vehicles in national parks would be required to have CUAs. Which entity is actually required to possess the CUA? Further, which entity in such a movement where both companies possess a CUA are responsible for reporting the per passenger fees? Key guidance documents on the application and administration of CUA’s, NPS Director’s Orders – 48A and 48B are either missing or have not yet been completed. Review and concurrence with those documents seems critical to any fee increase and the successful execution of this program.

Motorcoaches provide a significant economic benefit to the destinations that they visit, in addition to providing large scale environmental benefits. Each motorcoach removes up to 50 cars from the roadways and park lands. According to a study comparing emissions across transportation modes done by M.J. Bradley & Associates and supported by the Union of Concerned Scientists – Motorcoaches emit the lowest average amount of grams of CO2 per passenger mile (50) of any mode of transportation including transit bus (308), and single passenger vehicles (378). As such, each motorcoach has a net positive impact on the environment. Yet, in this proposal, motorcoaches face a significant proportional fee increase to that proposed for individual passenger cars. Not only is this economically disadvantageous, but it disincentivizes the environmental benefits that motorcoaches provide. However, many national parks have sought to implement bus/motorcoach shuttle systems to reduce the environmental impact cars have on our national parks.

ABA hopes that the NPS will seek to incentivize motorcoach and group travel to national parks, rather than penalize it or discourage it as presented in this proposal.

**This NPS proposal should be halted and reconsidered.**

We look forward to continuing our strong partnership with the NPS to promote positive experiences and appreciation of the national parks from visitors hailing from all over the world. In light of this partnership, ABA would like to volunteer to host a listening session at our Annual convention, ABA Marketplace, taking place in Charlotte, NC January 26-30, 2018 to solicit additional comments from the public on this topic. A number of other Federal Agencies (e.g. Transportation Security Administration, Department of Transportation, etc.) have hosted roundtables, workshops and listening sessions at our industry events to solicit additional comments from the travel and tourism industry, providing ample opportunities to provide meaningful comments and explain complex proposals.

We stand ready to discuss these and other options with the NPS as you seek to address the issues with this proposal and hope that any decisions impacting the current CUA program will be delayed until the national CUA program structure is determined. We appreciate that the NPS is taking the initiative to request public input and ABA supports additional public discourse before making changes to this key program.

Sincerely,

Brandon Buchanan
Director of Regulatory Affairs