



March 12, 2018

VIA ELECTRONIC SUBMISSION

The Honorable Ryan Zinke
Secretary, U.S. Department of the Interior
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Re: Proposed Changes to Road-based Commercial Tour Requirements and Fees¹

Dear Secretary Zinke:

On October 24, 2017, the U.S. Department of the Interior National Park Service (NPS) announced an open comment period on a proposal to change commercial use authorization (CUA) requirements and fees. The proposed fee structure would increase fees at seventeen of the top revenue-producing National Parks, and is scheduled to go into effect on January 1, 2019. The NPS, though not required to do so, collected public comments through its website. The U.S. Small Business Administration's Office of Advocacy (Advocacy) applauds the NPS' efforts to engage the public on the issue of setting fees for road-based commercial tours, and respectfully submits the following comments on the proposed changes. Advocacy encourages NPS to consider the impacts to small entities when making decisions regarding setting fees for CUA's, and to consider alternatives that may be less burdensome to small businesses.

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

¹ U.S. DEP'T OF THE INTERIOR, NAT'L PARK SERVICE, PROPOSED CHANGES TO ROAD-BASED COMMERCIAL TOUR REQUIREMENTS AND FEES, (October 24, 2017), *available at* <https://parkplanning.nps.gov/document.cfm?documentID=83652>



Background

A commercial use authorization (CUA) allows entities to conduct commercial activities within National Parks. The NPS issues CUAs to manage visitor services including road-based commercial tours. Pursuant to 54 U.S.C. § 100904, Admission and Special Recreation Use Fees, the Secretary of the Interior establishes commercial tour use fees to be imposed on vehicles entering National Parks for the purposes of providing commercial tour services.² Additionally, the statute allows the Secretary to make periodic adjustments to the fees imposed.³ CUA's will only be granted if the Secretary determines that the use will have minimal impact on resources and values within the Park.⁴ The elements of a CUA include a requirement for payment of a reasonable fee to recover associated management and administrative costs.⁵ NPS states that it defines road-based commercial tours as, "one or more persons traveling on an improved roadway on an itinerary that a company or individual has packaged, priced, or sold for leisure/recreational purposes."⁶

On October 24, 2017, the NPS announced an open comment period on a proposal to standardize road-based commercial tour CUA requirements and fees. The proposed fee structure would go into effect on January 1, 2019. The proposal would require that road-based commercial tour operators obtain a CUA for each location in which they operate, as well as submit mandatory annual CUA reports after each season.⁷ The fees would be composed of three items: a CUA application fee, a CUA management fee, and an entrance fee.

The CUA application fee would be an annual, non-refundable charge of \$300.⁸ NPS states it would adjust the fee periodically to account for increased costs of inflation. The proposed management fee would be \$5 per client. NPS states this is to recover day-to-day road-based tour management and monitoring costs, and fund improvement projects. Finally, NPS would charge an entrance fee based on whether the park currently charges a per person fee or a Commercial Vehicle Fee Schedule.⁹

If in instances where the tour operator is not the same as the transportation provider, then the responsibility for obtaining the CUA would fall on the company that sold the tour.¹⁰ NPS stated they will maintain exceptions to this requirement; however they did not specify what those

² See 54 U.S.C. § 100904 (f) (1).

³ *Id.* at (3).

⁴ See 54 U.S.C. § 101925 (b) (1).

⁵ *Id.* at (2) (A).

⁶ U.S. DEP'T OF THE INTERIOR, NAT'L PARK SERVICE, PROPOSED CHANGES TO ROAD-BASED COMMERCIAL TOUR REQUIREMENTS AND FEES, (October 24, 2017), *available at* <https://parkplanning.nps.gov/document.cfm?documentID=83652>

⁷ U.S. DEP'T OF THE INTERIOR, NAT'L PARK SERVICE, COMMERCIAL TOUR REQUIREMENTS AND FEES FACT SHEET, (October 24, 2017), *available at* <https://parkplanning.nps.gov/document.cfm?parkID=442&projectID=75576&documentID=83652>

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. DEP'T OF THE INTERIOR, NAT'L PARK SERVICE, PROPOSED CHANGES TO ROAD-BASED COMMERCIAL TOUR REQUIREMENTS AND FEES, (October 24, 2017), *available at* <https://parkplanning.nps.gov/document.cfm?documentID=83652>

exceptions will be or to whom they will apply.¹¹ In addition, all commercial vehicles will continue to pay the commercial entrance fee even if they are not required to obtain a CUA.¹²

Small Businesses are Affected by Fee Increases

Advocacy spoke with several small commercial tour operators who stated that the proposal would have a detrimental effect on their business. In some cases, NPS is proposing to increase fees by almost 400 percent. These tour operators stated that consumers purchase tour packages based on what is most cost-effective. Therefore, if the tours become more expensive in order to recover the costs of the increased fees, consumers will simply stop paying for tours and instead do other activities or attempt to navigate the parks on their own.

As one small tour operator demonstrated, the fees would force them to forego National Parks altogether which is nearly one-fourth of their annual summer business. The business operates in the Badlands, Yellowstone, and Grand Teton National Parks. They are currently paying \$500 to access the three parks. However, after the price changes the fees would potentially increase to \$4,305, an increase of over 750 percent (Table 1).¹³

TABLE 1: Price Change Example for Single Charter Bus Trip			
Park	Current Price¹⁴	New Price¹⁵	Percent Change
Badlands	\$ 200	\$ 785	293%
Yellowstone	\$ 300	\$ 1,760	487%
Grand Teton (Southbound)¹⁶	\$ -	\$ 1,760	-
Total Price	\$ 500	\$ 4,305	761%

Several other small business tour operators in various parts of the country reported similar or higher cost increases stating that they will be detrimental to business. Many companies worry that they will not be able to pass the cost along to their customers due to a large number of substitute tourism products in the market. Finally, small businesses fear that the cost increases will hurt their competitiveness with large tour operators.

According to data from the U.S. Census, 95 percent of businesses in the scenic and sightseeing transportation industry are small business as defined by the Small Business Administration.^{17, 18}

¹¹ Id.

¹² Id.

¹³ Table 1 utilizes estimates provided to Advocacy by a small site-seeing charter bus business. Estimates from other small businesses provided to Advocacy are congruent to those appearing in Table 1.

¹⁴ Current CUA permit fee.

¹⁵ Calculated by adding the proposed CUA permit fee to the proposed Group 2 entry fee.

¹⁶ Intentionally left blank, as stakeholders did not provide data for these categories.

¹⁷ U.S. CENSUS BUREAU'S 2012 STATISTIC OF U.S. BUSINESSES, (October 3, 2016) available at <https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html>

¹⁸ U.S. SMALL BUS. ADMIN., TABLE OF SMALL BUS. SIZE STANDARDS, (February 26, 2016), available at https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf

Small businesses in this industry tend to have very small revenues and are potentially less able to sustain economic shocks. For example, over half of businesses in this industry (59 percent) have revenues of less than \$500,000, and a substantial number (22 percent) have revenues of less than \$100,000. Businesses of these sizes will find it very difficult to absorb the large cost increases as proposed.

Advocacy's Comments

Advocacy applauds DOI's efforts to engage the public on its proposal to increase entrance fees. Given the information Advocacy received, Advocacy suggests that NPS consider the economic impacts on small entities of its proposal. Advocacy suggests that in order to conduct a thorough review, NPS consider the economic impacts the proposed increases would have on small businesses, and consider feasible alternatives that may minimize the impact to small entities while still achieving the Agency's mission. Such alternatives may include increasing the rates on an incremental basis, offering exemptions to rate increases for the smallest entities, or offering bundled rates so that operators do not have to pay certain fees more than once. In addition, Advocacy encourages NPS explore other means of recovering CUA costs including through appropriations funding.

The current proposal is set to take effect in less than a year. These increases are not simple, nominal increases meant to overcome inflation or recover unanticipated costs. They are exorbitant in scale, in some cases nearly 800 to 900 percent more than the current costs. This large of an increase in such a short amount of time would put most small tour operators out of business. NPS did not provide any justification in the form of data as to why it is proposing such a drastic change to the fee structure, other than to state that it is to recover administrative costs of managing the CUAs. Such information should be made available to the public in the proposal so that both Advocacy and small businesses can better understand why the Agency's proposal is inconsistent with previous data. Indeed Interior's own solicitor general report from 2015 did not indicate that such a severe increase was needed to recoup any deficits in revenue. That report suggested that a 30 percent increase was sufficient.¹⁹

Advocacy suggests that NPS use the Regulatory Flexibility Act (RFA)²⁰ as a framework for its small business economic analysis. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),²¹ gives small entities a voice in the rulemaking process. While the RFA does not specifically apply in this instance, the factors set forth in section 603(b) on creating an Initial Regulatory Flexibility Analysis (IRFA) may be a useful tool for NPS to consider when conducting its review.²² Specifically, NPS may wish to consider the following factors:

¹⁹ U.S. Department of the Interior, Office of the Inspector General, Review of National Park Service's Recreation Fee Program, (February 19, 2015), *available at*

<https://www.doioig.gov/sites/doioig.gov/files/CINNPS00122013Public.pdf>

²⁰ 5 U.S.C. §601 et seq.

²¹ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

²² 5 U.S.C. § 603 (b).

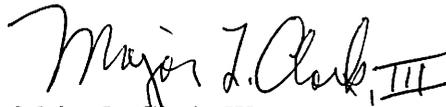
1. A description of reasons why action is being considered;
2. The objectives of, and legal basis for the action;
3. A description of, and estimated number of small entities affected;
4. A description of, and estimate of compliance requirements including differences in cost, if any, for different groups of small entities;
5. Identification of duplication, overlap, and conflict with other rules and regulations; and
6. A description of significant alternatives to the action.

Performing this analysis may help NPS to reach a decision regarding the proposed increases that are not overly burdensome to small entities. Advocacy is also available to assist with such analysis.

Conclusions and Recommendations

Advocacy urges NPS to reconsider its current proposal for fee increases, and implement cost-saving alternatives that would help small business. The current proposal would have a detrimental effect on most if not all small tour operators. Advocacy appreciates the opportunity to comment publicly on this issue, and encourages NPS to give full consideration to the above recommendations. If you have any questions or require additional information please contact me or Assistant Chief Counsel Prianka Sharma at (202) 205-6938 or by email at prianka.sharma@sba.gov.

Sincerely,



Major L. Clark, III
Acting Chief Counsel
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