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Commercial Filming and Photography on Federal Lands

Commercial filmmakers, videographers, and photographers often seek to use federal lands as locations for their works. Historically, the major federal land management agencies—the Bureau of Land Management (BLM), National Park Service (NPS), and Fish and Wildlife Service (FWS) in the Department of the Interior (DOI) and the U.S. Forest Service (FS) in the Department of Agriculture (USDA)—did not share a consistent approach to regulating commercial filming and photography on their lands. A 2000 law, P.L. 106-206 (16 U.S.C. 460l-6d), directed the Secretaries of the Interior and Agriculture to require permits and develop a consistent fee structure for commercial filming and some photography on federal lands. Pursuant to the law, the agencies have established permitting procedures and are currently in the process of setting fees. Legislation in the 115th Congress would alter requirements for the agencies' fee schedules and permits.

DOI and USDA are currently in the process of standardizing fees for commercial filmmaking and photography on federal lands, which have served as locations for many well-known films such as *Star Wars*, *Planet of the Apes*, and *The Hunger Games*.

Statutory Requirements for Permits and Fees

Under P.L. 106-206 (16 U.S.C. §460l-6d and 54 U.S.C. §100905), the Secretaries of the Interior and Agriculture must require permits and establish reasonable fees for commercial filming on federal lands. The fees must take into account (1) the number of days of filming, (2) the size of the film crew, (3) the amount and type of equipment, and (4) other factors that the Secretaries deem appropriate. The fees must provide a “fair return” (undefined in the law) to the nation for the activity. In addition to fees, the Secretaries must recover any administrative, personnel, or other costs incurred by the agencies during filming. Permits are not to be issued if the activity would damage resources, unreasonably disrupt public use and enjoyment of a site, or pose health and safety risks.

Still photography requires a permit or fee only if it is in an area that is not ordinarily open to the public, if additional administrative costs are likely, or if models or props other than the site’s own resources are used.

Fees and costs collected under P.L. 106-206 are to be available for use by the collecting agencies without further appropriation. The majority of funds are retained at the site at which they were collected, and the fees may be used for purposes such as backlogged repair and maintenance projects, interpretation, signage, facility enhancement, resource preservation, fee collection, and law enforcement.

Agency Regulations

Department of the Interior. In August 2013, DOI issued a final rule to bring three agencies—BLM, NPS, and FWS—into compliance with P.L. 106-206 (*78 Federal Register* 52087, modifying regulations at 36 C.F.R. Part 5, 43 C.F.R. Part 5, and 50 C.F.R. Part 27). In December 2014 and again in December 2016 (*81 Federal Register* 94496), the Bureau of Reclamation announced its intent to amend its regulations to accord with those of the other DOI agencies. Special filming and photography restrictions for Indian lands administered by DOI’s Bureau of Indian Affairs (43 C.F.R. Part 5, Subpart B) remain unchanged.

The DOI regulations define commercial filming and still photography consistently for BLM, NPS, and FWS and clarify which activities require a permit, in accordance with P.L. 106-206. The regulations state conditions under which a filming or photography permit may be denied, such as if the activity would cause resource damage, unreasonably disrupt public use, pose health or safety risks, or violate the Wilderness Act (16 U.S.C. 1131-1136) or other applicable laws or regulations. Permit applications are to be processed in a “timely manner,” and permit denials may be appealed to higher levels of DOI management. The regulations also discuss the more limited circumstances in which a permit is required for news-gathering activities (defined as filming, videography, and still photography carried out by a representative of the news media). Among other conditions, such a permit is required only if obtaining it will not interfere with the ability to gather the news.

Permit holders are responsible for two types of payments: a *location fee* that provides a fair return to the nation for the use of federal land and *repayment of costs* incurred by the government in processing the request and administering the permit. The permit holder also has liability and bonding requirements.

Forest Service. FS follows its existing regulations for commercial filming and photography permits (36 C.F.R. 251), which were in place prior to passage of P.L. 106-206. FS collaborated with DOI on a new fee schedule proposed in 2013 (see below). Also, in 2014, FS proposed but did not finalize a directive that would establish additional criteria for commercial filming and photography in congressionally designated wilderness areas (*79 Federal Register* 52626). For example, such activity would have to be focused primarily on disseminating information about wilderness, would have to preserve the area’s wilderness character as defined in the Wilderness Act (16 U.S.C. 1131 ff.), and would have to be wilderness-dependent (unable to be carried out elsewhere). Some Members of Congress and other stakeholders objected to the proposed FS directive, especially questioning whether it would infringe on the First Amendment rights of news reporters. FS stated that

the proposed directive would not affect news gathering in wilderness areas.

Proposed Fee Schedule

Along with the August 2013 DOI final rule, DOI and USDA jointly published a proposed fee schedule to set uniform fees for commercial filming and photography activities (*78 Federal Register* 52209). **Table 1** shows the proposed fees.

Table 1. Proposed DOI/USDA Land-Use Fee Schedule for Commercial Filming and Photography

Commercial Filming	
<i>Number of People</i>	<i>Fee</i>
1-3, camera and tripod only	\$10/day or \$250/month
1-5, more than a camera and tripod	\$75/day
6-10	\$150/day
11-30	\$350/day
31-50	\$650/day
51-70	\$1,000/day
More than 70	\$1,500/day

Still Photography	
<i>Number of People</i>	<i>Fee</i>
1-3, camera and tripod only	\$10/day or \$250/month
1-5, more than a camera and tripod	\$50/day
6-10	\$100/day
11-20	\$200/day
21-30	\$300/day
More than 30	\$450/day

Source: *78 Federal Register* 52209.

Note: Fees for still photography would apply only in cases where the photography requires a permit (see above).

The proposed amounts were based on current fees charged by BLM and FS for commercial filming and photography, as well as on public comments received on a draft fee schedule previously proposed by NPS and discussions with state and local film commissioners and industry representatives. The agencies received public comments but have not yet published a final schedule.

Financial Effects of New Fees

In some cases, the fees proposed for uniform use across the four agencies represent a change from fees currently being charged by individual agencies. Certain fees would increase, and others would decrease, depending on the agency involved and other factors. For example, a commercial filming crew of 60 people working at an NPS site such as Grand Canyon National Park currently pays a fee of \$750 per day. Under the new schedule, the fee would increase to \$1,000 per day. By contrast, a crew of five people filming at a BLM site in California or Utah currently

pays a fee of \$250 per day, but under the new schedule the fee would decrease to \$75 per day.

In scoring the 2000 legislation, the Congressional Budget Office stated that the act's effects "would depend on many behavioral factors that cannot be predicted with confidence." For example, to the extent that the new fees represent increases from previous amounts, they could bring in more revenue or they could discourage filmmakers and photographers from using federal sites. Congress may monitor the financial effects of the new regulations and fees over time.

Legislation

In the 115th Congress, H.R. 1944 would amend P.L. 106-206 to allow film crews of five or fewer to pay an annual fee of \$200 for filming on federal lands and waters. The proposed \$200 *annual* fee would differ from the agencies' proposed fee schedule, which would charge film crews of five or fewer with more than a camera and tripod \$75 per day.

In the 114th Congress, S. 2012 would have amended P.L. 106-206 to make several changes. The bill would have required the agencies to finalize their fee schedule no later than 180 days after the bill's enactment. It would have exempted individuals and small businesses that already hold certain other NPS permits from needing a commercial filming and photography permit. It also would have exempted from paying fees (but not from cost recovery) film crews of three or fewer that qualify as small businesses and use only a camera and tripod. The bill clarified that news gathering would not be considered a commercial activity that would require fees and permits. The bill also would have named a different law to govern the use of commercial filming fees. That is, under P.L. 106-206, the fees are to be used according to the formula established for another type of federal lands fee—recreation fees—in P.L. 104-134. However, this law no longer governs the use of recreation fees, and was replaced by the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. 6801 et seq.). S. 2012 would have amended P.L. 106-206 to base filming and photography fee use on the newer recreation fee law. S. 2012 passed the Senate but did not become law.

In the 113th Congress, H.R. 4243 would have allowed commercial filming and photography, at the discretion of the Capitol Police, in portions of the U.S. Capitol grounds where these activities currently are prohibited.

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