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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, federal land management agencies did not share a consistent approach to regulating commercial filming and photography on their lands. In 2000, P.L. 106-206 (codified at 16 U.S.C. §460l-6d and 54 U.S.C. §100905) directed the Secretaries of the Interior and Agriculture to require permits and develop a consistent fee structure for commercial filming and some types of photography on federal lands. Pursuant to the law, the agencies have established permitting procedures and have taken steps toward standardizing fees. Legislation introduced in recent years sought to alter requirements for the agencies' fee schedules and permits.

The Department of Interior and the Department of Agriculture are required by law to establish “reasonable” 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, 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 United States 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 available for use by the collecting agencies without further appropriation. The majority of funds are retained at the site at which they were collected. The fees have been 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, the Department of the Interior (DOI) issued a final rule pursuant to P.L. 106-206 focused on three of its agencies—

the Bureau of Land Management (BLM), National Park Service (NPS), and U.S. Fish and Wildlife Service (FWS) (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, respectively). The regulations also left intact long-standing special filming and photography restrictions for Indian lands administered by DOI's Bureau of Indian Affairs (43 C.F.R. Part 5, Subpart B). In January 2018, the Bureau of Reclamation announced its intent to amend its regulations to accord with those of the other DOI agencies (83 *Federal Register* 1664) but has not provided additional updates to the status of this process.

The 2013 DOI regulations define commercial filming and still photography consistently for BLM, NPS, and FWS and clarify which activities require a permit. 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 would 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 (undefined in regulations) to the United States 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 must meet liability, indemnification, and bonding requirements.

Forest Service. The U.S. Forest Service (FS) uses general special-use regulations in place prior to P.L. 106-206 for authorizing commercial filming and photography permits (36 C.F.R. Part 251) on agency lands. These regulations establish application procedures, fees, and other requirements for a wide range of commercial and noncommercial uses. In amending these regulations in 2004, FS defined *commercial filming* but did not include specific permitting requirements for uses that meet this definition. In 2014, FS proposed, but in 2019 withdrew, a directive to establish additional criteria for commercial filming and photography in congressionally designated wilderness areas (79 *Federal Register* 52626; 84 *Federal Register* 47443).

DOI and FS Proposed Fee Schedule

Along with the August 2013 DOI final rule, DOI and the Department of Agriculture (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	
Number of People	Fee
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	
Number of People	Fee
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 previous fees charged by BLM and FS for commercial filming and photography, 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 published a final schedule or made subsequent announcements regarding its status.

Financial Effects of New Fees

In some cases, the fees proposed for uniform use across the four agencies would represent a change from fees currently 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 proposed 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 proposed 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 choose to monitor the financial effects of any finalized regulations and any new fees over time.

Recent Litigation and Policy Developments

In January 2021, a federal judge for the U.S. District Court for the District of Columbia ruled that the statute and regulations underlying the NPS permitting program—specifically the commercial filming provisions of the program—violated the free speech clause of the First Amendment. The court issued an injunction preventing the enforcement of 54 U.S.C. § 100905 and the 2013 regulations promulgated pursuant to that statute (*Price v. Barr et al.*, 514 F. Supp. 3d 171, 187-93 (D.D.C. 2021)). In response, NPS issued interim guidance in February 2021 that exempted "low-impact" filming from permitting requirements and required permits only for filming activities that may affect public health and safety, impair resources, or interfere with visitor experiences. NPS defined *low-impact* filming as groups of five people or fewer carrying their own equipment and using small tripods to hold their cameras. BLM and FWS, which administer commercial filming permits pursuant to the same 2013 regulations used by the NPS (as noted), also issued interim or temporary guidance.

In August 2022, an appellate court reversed the 2021 decision (*Price v. Garland*, 45 F.4th 1059 (D.C. Cir. 2022)), and in October 2022, NPS rescinded the interim guidance that was in place during the litigation. The agency subsequently issued revised guidance that requires permits for all commercial filming, regardless of the size of the crew or type of equipment used. BLM and FWS have not issued revised guidance following the appellate court ruling.

Recent Legislation

Congress has considered legislation in recent years that would affect permitting and fees for commercial filming and photography on federal lands, as shown in the following examples. In the 117th Congress, the Federal Interior Land Media Act (FILM Act; H.R. 8258) would exempt certain commercial filming and content creation on federal lands from requiring a permit. Exempted activities would need to involve fewer than six people, take place at a location in which the public is allowed, not negatively impact resources, and meet other specified requirements. Other bills introduced in the 116th Congress would have similarly adjusted or specified how and when fees and permits could be required on federal lands (see H.R. 2106 and H.R. 1326). In addition, H.R. 5521 in the 116th Congress 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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