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Commercial Filming and Photography on Federal Lands

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Federal lands such as national parks, forests, wildlife refuges, ranges, and other landscapes are popular locations for motion pictures and commercial photography.¹ 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 for regulating commercial filming and photography on their lands. For example, while the FS has long charged fees for commercial filming, prior to 2000 the NPS and FWS were prohibited by regulation from charging such fees.²

A 2000 law, P.L. 106-206 (16 U.S.C. 460l-6d), directed the Secretaries of Interior and Agriculture to require permits and develop a consistent fee structure for commercial filming and some photography on federal lands. In response to this law, on August 22, 2013, the Department of the Interior published a final rule establishing regulations for these activities for the BLM, NPS, and FWS (the FS already had in place a regulatory policy for film and photography permits).³ In addition, on the same day, the four agencies jointly released a proposed fee schedule that would set uniform fees for commercial filming and photography across federal lands.

In its oversight role, Congress may review the 2013 regulations and proposed fee schedule. One issue is whether the fees are set appropriately for smaller-scale filmmakers and photographers. In the 113th Congress, H.R. 2798, H.R. 3197, H.R. 3590, S. 1335, and S. 1660 propose special rules for film crews of five or fewer that could in some cases result in lower fees than those proposed by the agencies. Additionally, Congress may consider issues such as whether the fees provide a “fair return” to the nation, as required by P.L. 106-206, and whether the regulations align with broader government goals to streamline procedures, reduce paperwork, and increase efficiency. A separate issue is addressed in H.R. 4243, which would open restricted parts of the U.S. Capitol grounds to commercial filming and photography.

Requirements for Fee System in P.L. 106-206

P.L. 106-206 requires the Secretaries of Interior and Agriculture to establish a system of permits and fees for commercial filming on federal lands. Fees must take into account (1) the number of days required for filming, (2) the size of the film crew, (3) the amount and type of equipment present, and (4) other factors that the Secretaries deem appropriate. The fees must provide a “fair return” to the nation for the activity. (The law does not provide a definition of “fair return.”) In addition to fees, the Secretaries must recover any administrative, personnel, or other costs that the agencies incur during filming.

¹ Well-known films using federal lands as locations include, among many others, *The Grapes of Wrath* (1940, Petrified Forest National Park in Arizona); *Planet of the Apes* (1967, Glen Canyon National Recreation Area in Utah); *True Grit* (1969, Inyo National Forest in California); *Star Wars* (1977, Death Valley National Monument in California); *Close Encounters of the Third Kind* (1977, Black Hills National Forest and Devil’s Tower National Monument in Wyoming); *Indiana Jones and the Last Crusade* (1989, Arches National Park in Utah); and *The Hunger Games* (2012, Pisgah National Forest in North Carolina). See National Park Service, “Movies Filmed on National Park Lands, 1910 to 1994,” at http://www.nps.gov/pub_aff/movie.htm; and U.S. Forest Service, “List of Movies Filmed on National Forests,” at <http://www.fs.fed.us/news/2013/stories/06/list-of-movies.shtml>.

² The earlier regulations prohibiting the NPS and FWS from charging fees for the recording of motion pictures, television productions, or soundtracks were at 43 C.F.R. part 5, and are available at <http://www.gpo.gov/fdsys/pkg/CFR-2006-title43-vol1/xml/CFR-2006-title43-vol1-part5.xml>.

³ 78 *Federal Register* 52087, August 22, 2013.

Still photography does not always require a permit or fee. The law directs that a photography permit or fee is required only if the activity takes place 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 unit's own resources are used.

The law directs the Secretaries to respond to permit applications in a timely manner, but does not specify response times. 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.

Use of Revenues in P.L. 106-206

Fees and additional costs collected under P.L. 106-206 are to be available for use by the collecting agencies without further appropriation. The revenues are to be used according to the formula established for another type of federal lands fee—recreation fees—in the now-superseded Recreational Fee Demonstration Program (also known as Fee Demo; P.L. 104-134, Section 315).⁴ Under the Fee Demo formula, agencies retained at least 80% of the revenue for use at the site where it was collected, and could use the remaining fees agency-wide. The fees could be used for purposes such as backlogged repair and maintenance projects, interpretation, signage, facility enhancement, resource preservation, fee collection, and law enforcement. Under P.L. 106-206, the Fee Demo formula continues to be the model for commercial filming and photography fees, although it is no longer used for recreation fees.

Implementation of P.L. 106-206

The passage of P.L. 106-206 necessitated that the Department of the Interior revise earlier regulations that had prohibited the NPS and FWS from collecting fees for the making of motion pictures, television productions, and soundtracks on their lands.⁵ In April 2006, DOI issued a final rule that removed the earlier prohibitions.⁶ The two agencies established interim policies for commercial filming and photography, while new regulations were developed.⁷ The BLM had not been prohibited from issuing permits and recovering fees for filming and photography,⁸ but the collected fees had been deposited into the General Treasury, whereas P.L. 106-206 directed that they be retained by the agency.

In August 2007, DOI issued a proposed rule for commercial filming and photography that would bring the BLM, NPS, and FWS into compliance with P.L. 106-206.⁹ After a comment period, the final rule was released in August 2013.¹⁰

⁴ In 2004, the Fee Demo program was replaced by the Federal Lands Recreation Enhancement Act (P.L. 108-447), which established a new recreation fee program for five federal agencies. For more information, see CRS Report RL33730, *Recreation Fees Under the Federal Lands Recreation Enhancement Act*, by Carol Hardy Vincent.

⁵ See footnote 2 for a link to the earlier regulations at 43 C.F.R. part 5.

⁶ 71 *Federal Register* 19127, April 13, 2006.

⁷ For the NPS's interim policies, see <http://www.nps.gov/applications/digest/permits.cfm>. For the FWS's interim commercial filming permits, see <http://www.fws.gov/refuges/visitors/permits.html>.

⁸ The agency had permit and fee authority under 43 C.F.R. 2920. For more information, see BLM, "Filming on Public Land," at <http://www.blm.gov/wo/st/en/prog/more/lands/filming.html>.

⁹ 72 *Federal Register* 46426, August 20, 2007. Filming and photography on lands administered by DOI's Bureau of (continued...)

Separately, the FS issues special use permits and collects fees for commercial filming and photography on national forest lands, under regulations that had been in place prior to passage of P.L. 106-206.¹¹ The FS has collaborated with the BLM, NPS, and FWS on a proposed new fee schedule, which was released in August 2013 along with the final rule for Interior agencies.¹²

2013 Final Rule for the Department of the Interior

The final rule, which modifies regulations at 36 C.F.R. Part 5, defines commercial filming and still photography and explains which activities require a permit, “thereby creating consistency among DOI agencies.”¹³ In accordance with P.L. 106-206, the rule states that all commercial filming and certain photography activities require a permit.¹⁴ The rule also discusses the more limited circumstances when a permit is required for news-gathering activities.¹⁵ It states conditions under which a filming or photography permit may be denied: 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.¹⁶ Permit applications are to be processed in a timely manner, and denials of permits may be appealed.¹⁷

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.¹⁸ The permit holder also has liability and bonding requirements.¹⁹

The DOI rule discusses how the fees collected for commercial filming and photography will be used. In accordance with P.L. 106-206, at least 80% of the fees will be available for use at the site at which they were collected. The fees will be used for the purposes set out in P.L. 104-134 for the recreational Fee Demo program, including backlogged repair and maintenance projects; interpretation, signage, and habitat or facility enhancement; resource preservation; maintenance; and law enforcement related to public use and recreation.²⁰

(...continued)

Indian Affairs are governed by separate regulations at 43 C.F.R. 5.2.

¹⁰ 78 *Federal Register* 52087, August 22, 2013.

¹¹ 36 C.F.R. 251.

¹² 78 *Federal Register* 52209.

¹³ 78 *Federal Register* 52087. The definitions of commercial filming and photography are in Section 5.12 of the revised regulations. The regulations also cover audio recording on DOI lands; for discussion, see the “Response to Comments” section of the final rule, esp. comment 2.

¹⁴ Section 5.2; see page 2 for a discussion of instances where a permit is required for photography.

¹⁵ Section 5.4. “News-gathering activities” are defined as filming, videography, and still photography activities carried out by a representative of the news media (Section 5.12). A permit is required only if necessary to protect natural and cultural resources, avoid visitor use conflicts, ensure public safety, or authorize entry to a closed area; and only if obtaining a permit will not interfere with the ability to gather the news. A permit for news-gathering is not subject to location fees or cost recovery.

¹⁶ Section 5.5. In addition, the rule states that a permit will be denied if it would result in unacceptable impacts or impairment to National Park Service resources or values; be inappropriate or incompatible with the purpose of a Fish and Wildlife Service refuge; or cause unnecessary or undue degradation of Bureau of Land Management lands.

¹⁷ Sections 5.9 and 5.10.

¹⁸ Section 5.8.

¹⁹ Section 5.7.

²⁰ 78 *Federal Register* 52087, “Response to Comments,” comment 6.

2013 Fee Schedule for the Departments of Interior and Agriculture

Along with the final rule, the Departments of Interior and Agriculture jointly published a proposed fee schedule, setting uniform fees for commercial filming and photography activities.²¹ **Table 1** shows the proposed fees. The fee amounts are based on the current fee schedules used by the BLM and FS for commercial filming and photography, as well as on public comments received on a draft fee schedule previously proposed by the NPS, and discussions with state and local film commissioners and industry representatives. The agencies state that the proposed fees are “based on sound business management principles and would provide a fair return to the United States, as required in the law.”²² Public comments on the proposed fee schedule were accepted through October 23, 2013, and a final fee schedule is to be published following comment analysis.²³

Table 1. Proposed USDA/DOI 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
over 70	\$1,500/day
Still Photography^a	
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
over 30	\$450/day

Source: 78 *Federal Register* 52209.

- a. Fees for still photography would apply only in cases where the photography requires a permit: when it involves models or props that are not a part of the site’s natural or cultural resources or administrative facilities; when it takes place at a location where members of the public generally are not allowed; or when additional administrative costs are likely.

²¹ 78 *Federal Register* 52209, August 22, 2013.

²² *Ibid.*

²³ 78 *Federal Register* 58342, September 23, 2013; and 79 *Federal Register* 1006, January 7, 2014.

The fee schedule would be adjusted annually for inflation, and no annual adjustment would exceed 5%. Each year, the revised fee schedule would be published in the *Federal Register* by October 1, with fees to take effect on January 1 of the following year.²⁴

In some cases, the fees proposed for uniform use across the four agencies represent a change from fees currently being charged by particular agencies. Certain fees would increase while 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 currently pays a fee of \$750 per day. Under the new schedule, the fee would increase to \$1,000 per day.²⁵ On the other hand, a crew of five people filming at a BLM site in California, Nevada, or Utah currently pays a fee of \$250 per day, but under the new schedule would pay only \$75 per day.²⁶

Role of Congress

Congress may review the commercial filming and photography regulations and proposed fee schedule for the land management agencies. One issue is whether the proposed fees represent an undue burden for smaller-scale filmmakers and photographers. Some comments on the DOI rule suggested that small crews should be exempted from the permit and fee requirements, because they operate with tight profit margins.²⁷ Others questioned whether the liability and bonding requirements would be problematic for smaller filmmakers and photographers.²⁸ (Unlike other aspects of the regulations, the liability and bonding provisions were not required by P.L. 106-206.) More generally, some feel that fees and permits are inappropriate mechanisms for regulating the use of federal lands, which should be available to all and should be financed through federal appropriations rather than user fees.²⁹

In the 113th Congress, proposals to institute special rules for film crews of five or fewer have been attached to broader hunting and fishing legislation.³⁰ These bills (H.R. 2798, H.R. 3197, H.R. 3590, S. 1335, S. 1660, and S. 1996) would amend P.L. 106-206 to allow such crews to pay an annual fee of \$200 for filming on federal lands and waters. A permit would be required, and would cover all filming activities or similar projects in areas designated for public use during public hours. No additional fees could be assessed, and the use of cameras or related equipment could not be prohibited.³¹ These legislative proposals, with their \$200 *annual* fee, differ from the

²⁴ Ibid.

²⁵ See **Table 1**, and National Park Service, “Commercial Filming and Still Photography Permits,” at <http://www.nps.gov/applications/digest/permits.cfm>.

²⁶ See **Table 1**, and Bureau of Land Management, “Filming Fees,” at http://www.blm.gov/wo/st/en/prog/more/lands/filming/filming_fees.html.

²⁷ 78 *Federal Register* 52087, “Response to Comments,” esp. comments 11 and 22.

²⁸ Ibid., esp. comment 21. For the liability and bonding requirements, see 78 *Federal Register* 52087, Section 5.7.

²⁹ See, e.g., *ibid.*, comment 23, and National Park Hospitality Association and National Parks Conservation Association, *Sustainable Supplementary Funding for America’s National Parks*, March 19, 2013, p. 3, at <http://bipartisanpolicy.org/sites/default/files/NPHA%20Version%20of%20Park%20Funding%20Ideas.pdf>, hereinafter referred to as NPHA and NPCA, *Sustainable Supplementary Funding*.

³⁰ The bills address film crews, but not commercial photographers.

³¹ However, the bills, similar to P.L. 106-206, would allow the Secretary to deny access to a film crew if there is a likelihood of resource damage that cannot be mitigated, if public use and enjoyment of the site would be unreasonably disrupted, or if public health or safety would be threatened. In addition, a permit could be denied if models or props would be used that are not part of the site’s natural or cultural resources or administrative facilities.

agencies' proposed fee schedule, which would charge film crews of five or fewer with more than a camera and tripod \$75 per *day*. (Crews of one to three people, with a camera and tripod only, would pay \$10 per day or \$250 per month in the proposed fee schedule.) The House passed H.R. 3590 on February 5, 2014.

While one concern may be whether the proposed fees are excessive, especially for smaller crews, a contrasting issue may be whether the fees are sufficient to achieve the requirement in P.L. 106-206 of providing a “fair return” to the nation for filming and photography on federal lands. Given federal budgetary constraints, some have suggested that land management agencies should assess multiple types of fees against market standards and charge higher fees if justified, thus providing revenue that would supplement federal appropriations.³² It may be difficult to determine a market standard for filming and photography on federal lands, because these lands are unique assets that may have a different value for filmmakers and photographers than other locations.³³ When developing the fee schedule, the agencies sought to make the fees comparable to those charged at the time by the FS and BLM, and to fees charged by state and local governments and privately run historic sites.³⁴ Some may contend that the nation should receive higher compensation for the use of its lands by private film crews, especially in the case of potentially high-grossing productions against whose profits the cost of federal land access may be relatively low. Others may argue that the federal government receives benefits from these activities that go beyond fees, in the form of “free advertising” of the nation’s resources.

Congress may also review the permitting and fee regulations in the context of broader government goals of reducing paperwork and streamlining permitting procedures. In its report on P.L. 106-206, the House Committee on Resources stated its intent that “the Secretary take into consideration the particular timeliness of a production in processing the applications and ... approve permits ... in the shortest time period possible and appropriate.”³⁵ Some have viewed the new filming and photography regulations as part of a broad Administration effort to streamline and simplify procedures.³⁶ Others have held that the regulations require too much permitting and are not clear about the time allotted for issuing permits.³⁷ The regulations do not give a specified response time, but instead state that administrators will process permits in a “timely manner,” and that “processing times will vary depending on the complexity of the proposed activity.”³⁸

Another concern for Congress is which, if any, federal sites should be closed to commercial filming and photography. For example, in the 113th Congress, H.R. 4243 would allow commercial filming and photography, at the discretion of the Capitol Police, in portions of the U.S. Capitol grounds where these activities are currently prohibited.³⁹ The bill’s sponsor, Delegate Eleanor

³² See, e.g., NPHA and NPCA, *Sustainable Supplementary Funding*, pp. 1-4. Similar issues have been discussed with respect to grazing fees on federal lands; for more information, see CRS Report RS21232, *Grazing Fees: Overview and Issues*, by Carol Hardy Vincent.

³³ For a discussion of difficulties in determining a market standard for filming and photography on federal lands, see the benefit-cost analysis prepared in 2007 by the DOI Office of Policy Analysis, esp. pp. 7-8, at http://www.nps.gov/applications/digest/NPS_Filming_Fees_BCA_FINAL.pdf.

³⁴ *Ibid.*; and 78 *Federal Register* 52209.

³⁵ H.Rept. 106-75, to accompany H.R. 154, 106th Congress.

³⁶ See, e.g., Phil Taylor, “Obama admin proposes fees for commercial filming, photography,” *Greenwire*, August 22, 2013.

³⁷ See, e.g., 78 *Federal Register* 52087, “Response to Comments,” comment 17 and others.

³⁸ 78 *Federal Register* 52087.

³⁹ The Capitol grounds are administered by the Architect of the Capitol, with security provided by the Capitol Police. (continued...)

Holmes Norton, stated that films and photographs of the U.S. Capitol are important for “telling the nation’s story and showcasing its democratic system of government.”⁴⁰ Potential opposition could include concerns about security or appropriateness of activities at the Capitol.

The effects of the new fees and regulations on agency revenues are uncertain. In an assessment of 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.”⁴¹ For example, to the extent that the new fees represent increases from previous amounts, this could bring in more revenue, or could discourage filmmakers and photographers from using federal sites. Congress may monitor the financial effects of the new regulations and fees over time.

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Current law, at 40 U.S.C. Chapter 51, generally prohibits commercial activity on the Capitol grounds, and only one area, Union Square (adjacent to the National Mall), allows commercial filming and photography.

⁴⁰ Sponsor’s introductory remarks on H.R. 4243, March 13, 2014, at <http://www.congress.gov/cgi-lis/query/z?r113:E13MR4-0015/>.

⁴¹ S.Rept. 106-67, to accompany H.R. 154, 106th Congress.