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# Commercial Filming and Photography on Federal Lands

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## Summary

Commercial filmmakers, videographers, and photographers often seek to use federal lands as locations for their works. 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 photography on federal lands. In August 2013, the Department of the Interior (DOI) published a final rule governing filming and photography permits for the Bureau of Land Management (BLM), the National Park Service (NPS), and the Fish and Wildlife Service (FWS). The Bureau of Reclamation also has announced its intent to amend its regulations on commercial filming and photography to accord with those of the other DOI agencies. The Forest Service (FS), in the U.S. Department of Agriculture, already had in place a regulatory policy for film and photography permits, but it joined with DOI in releasing—also in August 2013—a proposed fee schedule that would set uniform fees for commercial filming and photography across federal lands.

The 114<sup>th</sup> Congress may review the 2013 permit regulations and proposed fee schedule. One issue is whether the fees are set appropriately for smaller-scale filmmakers and photographers. S. 405 and S. 556 would establish special rules for small film crews that in some cases could result in lower fees than those proposed by the agencies. Congress also 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.

Another concern for Congress is which, if any, federal sites should be restricted or closed to commercial filming and photography. For example, questions have arisen about the extent to which these activities should be allowed or limited in congressionally designated wilderness areas. In September 2014, the Forest Service published a proposed directive that would establish detailed criteria for commercial filming and photography in wilderness areas. Some Members of Congress and other stakeholders expressed concerns about whether the proposed directive would infringe on the First Amendment rights of news organizations, although the Forest Service stated that the directive would not affect news-gathering activities. A different type of federal area was addressed in H.R. 4243 of the 113th Congress, which would have opened restricted parts of the U.S. Capitol grounds to commercial filming and photography.

## Contents

Requirements for Permits and Fees .....	2
Use of Revenues .....	2
Agency Regulations and Fee Schedule.....	2
2013 Final Rule, Department of the Interior .....	3
2013 Fee Schedule, Departments of the Interior and Agriculture .....	4
2014 Proposed Directive on Filming in Wilderness, Forest Service .....	5
Issues for Congress .....	6
Appropriateness of Fee Amounts .....	6
Efficiency of Permitting Procedures.....	8
Limitations at Certain Federal Sites .....	8
Effect on Agency Revenues.....	9

## Tables

Table 1. Proposed USDA/DOI Land-Use Fee Schedule for Commercial Filming and Photography.....	5
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## Contacts

Author Contact Information.....	9
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Federal lands such as national parks, forests, wildlife refuges, ranges, and other landscapes are popular locations for movies, television and Internet programs, and commercial photography.<sup>1</sup> 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, whereas the FS has long charged fees for commercial filming, prior to 2000 the NPS and FWS were prohibited by regulation from charging such fees.<sup>2</sup>

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, in August 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).<sup>3</sup> 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 December 2014, the Bureau of Reclamation stated its intent to amend its regulations to accord with those of the other DOI agencies.<sup>4</sup>

Bills in the 114<sup>th</sup> Congress would modify the 2013 regulations and proposed fee schedule. S. 405 and S. 556 would establish special rules for small film crews that in some cases could result in lower fees than those proposed by the agencies. Similar bills were introduced in the 113<sup>th</sup> Congress. Congress also may consider other issues related to the commercial filming regulations and fees, 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 government goals to streamline procedures, reduce paperwork, and increase efficiency.

Another issue is the extent to which commercial filming and photography should be limited or prohibited on certain federal lands. Some Members of Congress and other stakeholders raised concerns about a proposed directive published by the FS in September 2014 that would limit the circumstances under which permits can be granted for these activities in congressionally designated wilderness areas. Separately, H.R. 4243 of the 113<sup>th</sup> Congress would have opened restricted parts of the U.S. Capitol grounds to commercial filming and photography.

<sup>1</sup> 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](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/pao/news/2013/stories/06/list-of-movies.shtml>.

<sup>2</sup> 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>.

<sup>3</sup> 78 *Federal Register* 52087, August 22, 2013.

<sup>4</sup> “Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions,” 79 *Federal Register* 76455, December 22, 2014.

## 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 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.

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

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).<sup>5</sup> 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.

## Agency Regulations and Fee Schedule

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.<sup>6</sup> In April 2006, DOI issued a final rule that removed the earlier prohibitions.<sup>7</sup> The two agencies established interim policies for commercial filming and photography, while new regulations were developed.<sup>8</sup> The BLM had not

<sup>5</sup> 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.

<sup>6</sup> See footnote 2 for a link to the earlier regulations at 43 C.F.R. part 5.

<sup>7</sup> 71 *Federal Register* 19127, April 13, 2006.

<sup>8</sup> 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>.

been prohibited from issuing permits and recovering fees for filming and photography,<sup>9</sup> 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 2013, DOI issued a final rule for commercial filming and photography to bring all three agencies (BLM, NPS, and FWS) into compliance with P.L. 106-206.<sup>10</sup> In December 2014, the Bureau of Reclamation announced its intent to amend its regulations to accord with those of the other DOI agencies.<sup>11</sup>

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.<sup>12</sup> The FS 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.<sup>13</sup> Also, in September 2014, the FS issued a proposed directive on commercial filming in wilderness.<sup>14</sup>

## 2013 Final Rule, Department of the Interior

The DOI final rule defines commercial filming and still photography and explains which activities require a permit, “thereby creating consistency among DOI agencies.”<sup>15</sup> In accordance with P.L. 106-206, the rule states that all commercial filming and certain photography activities require a permit.<sup>16</sup> The rule also discusses the more limited circumstances when a permit is required for news-gathering activities.<sup>17</sup> 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.<sup>18</sup> Permit applications are to be processed in a timely manner, and denials of permits may be appealed.<sup>19</sup>

<sup>9</sup> 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>.

<sup>10</sup> 78 *Federal Register* 52087, August 22, 2013. The proposed rule had been issued in 2007 (72 *Federal Register* 46426, August 20, 2007). The final rule modifies DOI regulations at 36 C.F.R. Part 5, 43 C.F.R. Part 5, and 50 C.F.R. Part 27. Filming and photography on lands administered by DOI’s Bureau of Indian Affairs are governed by separate regulations at 43 C.F.R. 5.2.

<sup>11</sup> “Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions,” 79 *Federal Register* 76455, December 22, 2014.

<sup>12</sup> 36 C.F.R. 251.

<sup>13</sup> 78 *Federal Register* 52209, August 22, 2013.

<sup>14</sup> 79 *Federal Register* 52626, September 4, 2014.

<sup>15</sup> 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.

<sup>16</sup> Section 5.2; see page 2 for a discussion of instances where a permit is required for photography.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Sections 5.9 and 5.10.

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.<sup>20</sup> The permit holder also has liability and bonding requirements.<sup>21</sup>

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.<sup>22</sup>

## 2013 Fee Schedule, Departments of the Interior and Agriculture

Along with the final rule, the Departments of the Interior and Agriculture jointly published a proposed fee schedule, setting uniform fees for commercial filming and photography activities.<sup>23</sup> **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.”<sup>24</sup> 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, but no publication date has been announced.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup>

<sup>20</sup> Section 5.8.

<sup>21</sup> Section 5.7.

<sup>22</sup> 78 *Federal Register* 52087, “Response to Comments,” comment 6.

<sup>23</sup> 78 *Federal Register* 52209, August 22, 2013.

<sup>24</sup> *Ibid.*

<sup>25</sup> 78 *Federal Register* 58342, September 23, 2013; and 79 *Federal Register* 1006, January 7, 2014.

<sup>26</sup> *Ibid.*

<sup>27</sup> See **Table 1**, and National Park Service, “Commercial Filming and Still Photography Permits,” at <http://www.nps.gov/applications/digest/permits.cfm>.

<sup>28</sup> See **Table 1**, and Bureau of Land Management, “Filming Fees,” at <http://www.blm.gov/wo/st/en/prog/more/lands/> (continued...)

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

<b>Commercial Filming</b>	
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
<b>Still Photography<sup>a</sup></b>	
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.

- 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.

## 2014 Proposed Directive on Filming in Wilderness, Forest Service

On September 4, 2014, the FS issued a proposed directive on commercial filming in congressionally designated wilderness areas.<sup>29</sup> The proposed directive would replace interim guidance in the *Forest Service Handbook*.<sup>30</sup> The FS accepted public comments on the proposed directive through December 3, 2014.<sup>31</sup> A final directive has not yet been published.

The proposal would place additional criteria on permits issued for commercial filming and photography in wilderness areas, beyond those required on FS lands generally.<sup>32</sup> The additional criteria are that the activity:

(...continued)

[filming/filming\\_fees.html](#).

<sup>29</sup> 79 *Federal Register* 52626, September 4, 2014.

<sup>30</sup> *Forest Service Handbook* 2709.11, chapter 40.

<sup>31</sup> The public comment period was originally supposed to end on November 3, 2014, but was extended for 30 days (79 *Federal Register* 59213, October 1, 2014).

<sup>32</sup> On all FS lands, a special use permit may be issued for commercial filming and photography only if the proposed (continued...)



- has a primary objective of disseminating information about the use and enjoyment of wilderness or its ecological, geological, or other features of scientific, educational, scenic, or historical value (16 U.S.C. 1131(a) and (b));
- would preserve the wilderness character of the area proposed for use, such as leaving it untrammeled, natural, and undeveloped, and would preserve opportunities for solitude or a primitive and unconfined type of recreation (16 U.S.C. 1131(a));
- is wilderness-dependent—for example, a wilderness location is identified and there are no suitable locations for the activity outside of a wilderness area (16 U.S.C. 1133(d)(6));
- would not involve use of a motor vehicle, motorboat, or motorized equipment, including landing of aircraft, unless authorized by the enabling legislation for the wilderness area (36 C.F.R. 261.18(a) and (c));
- would not involve the use of mechanical transport, such as a hang glider or bicycle, unless authorized by the enabling legislation for the wilderness area (36 C.F.R. 261.18(b));
- would not violate any applicable order (36 C.F.R. 261.57); and
- would not advertise any product or service (16 U.S.C. 1133(c)).

Some Members of Congress and other stakeholders objected to the proposed FS directive, as discussed below in the “Issues for Congress” section.

## Issues for Congress

Congress may review the commercial filming and photography regulations and proposed fee schedule for the land management agencies, considering issues such as whether the fee amounts are fair and appropriate, whether the permitting process is adequately streamlined, whether commercial filming and photography should be restricted or prohibited at some federal sites, and how the new fees would affect agency revenues.

## Appropriateness of Fee Amounts

Some comments on the 2013 DOI rule stated that the proposed fees represent an undue burden for smaller-scale filmmakers and photographers. Commenters suggested that small crews should be exempted from the permit and fee requirements, because they operate with tight profit margins.<sup>33</sup> Some questioned whether the liability and bonding requirements would be problematic for smaller filmmakers and photographers.<sup>34</sup> (Unlike other aspects of the regulations, the liability and

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(...continued)

activity (1) meets the screening criteria in 36 C.F.R. 251.54(e); (2) would not cause unacceptable resource damage; (3) would not unreasonably disrupt the public’s use and enjoyment of the site where the activity would occur; and (4) would not pose a public health and safety risk.

<sup>33</sup> 78 *Federal Register* 52087, “Response to Comments,” esp. comments 11 and 22.

<sup>34</sup> *Ibid.*, esp. comment 21. For the liability and bonding requirements, see 78 *Federal Register* 52087, Section 5.7.

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.<sup>35</sup>

In the 114<sup>th</sup> Congress, proposals to institute special rules for film crews of five or fewer have been attached to broader hunting and fishing legislation (S. 405 and S. 556).<sup>36</sup> Similar bills were introduced in the 113<sup>th</sup> Congress.<sup>37</sup> The legislation would amend P.L. 106-206 to allow crews of five or fewer 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.<sup>38</sup> These legislative proposals, with their \$200 *annual* fee, 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*. (Crews of one person to three people, with a camera and tripod only, would pay \$10 per day or \$250 per month in the proposed fee schedule.)

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. Some view the requirement for a fair return as being particularly important in a climate of federal budgetary constraints. They have broadly suggested that land management agencies assess multiple types of fees against market standards and raise them if justified, thus providing revenue that would supplement federal appropriations.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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.

<sup>35</sup> 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, hereinafter referred to as NPHA and NPCA, *Sustainable Supplementary Funding*.

<sup>36</sup> The bills address film crews but not commercial photographers.

<sup>37</sup> The 113<sup>th</sup> Congress bills included H.R. 2798, H.R. 3197, H.R. 3590, S. 1335, S. 1660, S. 1996, and S. 2363. The House passed H.R. 3590, but none of the bills was enacted into law.

<sup>38</sup> 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.

<sup>39</sup> 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.

<sup>40</sup> 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](http://www.nps.gov/applications/digest/NPS_Filming_Fees_BCA_FINAL.pdf).

<sup>41</sup> *Ibid.*; and 78 *Federal Register* 52209.

## Efficiency of Permitting Procedures

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.”<sup>42</sup> Some have viewed the new filming and photography regulations as part of a broad Administration effort to streamline and simplify procedures.<sup>43</sup> Others have held that the regulations require too much permitting and are not clear about the time allotted for issuing permits.<sup>44</sup> 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.”<sup>45</sup>

## Limitations at Certain Federal Sites

Another concern for Congress is which, if any, federal sites should be restricted or closed to commercial filming and photography. As discussed above, the FS issued a proposed directive on September 4, 2014, establishing detailed criteria for permits in congressionally designated wilderness areas. Some Members of Congress and other stakeholders objected to the directive.<sup>46</sup> In particular, concerns focused on whether the directive would restrict the activities of news reporters and potentially infringe on their First Amendment rights.<sup>47</sup> The FS stated that the proposed directive would not affect reporters engaged in news gathering in wilderness areas.<sup>48</sup> The *Forest Service Handbook* specifies that no permit is required for broadcasting “breaking news.”<sup>49</sup> However, stakeholders expressed concerns that the rules may be too vague to ensure that news gathering will be protected.<sup>50</sup> A final directive has not yet been published.

Separately, H.R. 4243 in the 113<sup>th</sup> Congress would have allowed commercial filming and photography, at the discretion of the Capitol Police, in portions of the U.S. Capitol grounds where

<sup>42</sup> H.Rept. 106-75, to accompany H.R. 154, 106<sup>th</sup> Congress.

<sup>43</sup> See, e.g., Phil Taylor, “Obama admin proposes fees for commercial filming, photography,” *Greenwire*, August 22, 2013.

<sup>44</sup> See, e.g., 78 *Federal Register* 52087, “Response to Comments,” comment 17 and others.

<sup>45</sup> 78 *Federal Register* 52087.

<sup>46</sup> See, e.g., letter from Senators Wyden and Barrasso to Secretary of Agriculture Tom Vilsack, September 30, 2014, at <http://www.wyden.senate.gov/download/?id=74538550-B944-4EB8-AD82-4C4ED6903ACF&download=1>; and U.S. Senate Committee on Energy and Natural Resources, “Murkowski on Forest Service’s Proposed Regulation Requiring Permits for Photography and Filming,” at <http://www.energy.senate.gov/public/index.cfm/republican-news?ID=d82a8203-0b1f-4490-82d4-022f9c8850e0>. Also see statement by the Outdoor Writers Association of America, at <http://owaa.org/blog/2014/09/statement-by-owaa-on-usfs-proposed-directive-commercial-filming-wilderness/>; Niels Lesniewski, “Forest Service Photography Rule Faces Bipartisan Critics in the Senate,” *Roll Call*, September 30, 2014; and editorial in *The Missoulian*, October 1, 2014, at [http://missoulian.com/news/opinion/editorial/missoulian-editorial-fight-wilderness-photo-idea/article\\_761eff6c-497f-11e4-ad79-c3b2cda10124.html](http://missoulian.com/news/opinion/editorial/missoulian-editorial-fight-wilderness-photo-idea/article_761eff6c-497f-11e4-ad79-c3b2cda10124.html).

<sup>47</sup> See, e.g., Rob Davis, “Forest Service Says Media Needs Photography Permit in Wilderness Areas, Alarming First Amendment Advocates,” *Portland Oregonian*, September 23, 2014, at [http://www.oregonlive.com/environment/index.ssf/2014/09/forest\\_service\\_says\\_media\\_need.html](http://www.oregonlive.com/environment/index.ssf/2014/09/forest_service_says_media_need.html).

<sup>48</sup> See, e.g., Phil Taylor, “Forest Service: Journalism is not ‘commercial,’ needs no permit—chief,” *Greenwire*, November 7, 2014, at <http://www.eenews.net/greenwire/stories/1060008593/search?keyword=commercial+filming>.

<sup>49</sup> *Forest Service Handbook* 2709.11, Section 45.52a.

<sup>50</sup> See footnote 46.

these activities currently are prohibited.<sup>51</sup> The bill’s sponsor, Delegate Eleanor 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.”<sup>52</sup> Potential opposition could include concerns about security or appropriateness of activities at the Capitol.

## **Effect on Agency Revenues**

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.”<sup>53</sup> 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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<sup>51</sup> The Capitol grounds are administered by the Architect of the Capitol, with security provided by the Capitol Police. 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.

<sup>52</sup> Sponsor’s introductory remarks on H.R. 4243, March 13, 2014.

<sup>53</sup> S.Rept. 106-67, to accompany H.R. 154, 106<sup>th</sup> Congress.