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Filming and Photography on Federal Lands

Filmmakers and photographers often seek to use federal lands as locations for their works. National parks, national forests, and other federal lands have served as locations for many well-known films, such as *Star Wars*, *Planet of the Apes*, and *The Hunger Games*. Social media influencers, news organizations, and other small-scale creators also have used these resources as a backdrop for their content. Until recently, federal land management agencies were required by law (P.L. 106-206) to establish permits and fees for filming and still photography on federal lands that were conducted for "commercial" purposes. In January 2025, Congress enacted the Expanding Public Lands Outdoor Recreation Experiences Act (EXPLORE Act; P.L. 118-234), provisions of which amend how agencies manage filming and still photography on federal lands. Specifically, the new law limits the scenarios under which agencies may require a permit and/or fee for such purposes and removes the distinction between *commercial* and *noncommercial* work.

Requirements for Permits and Fees

The EXPLORE Act (codified at 16 U.S.C. §460*l*-6d and 54 U.S.C. §100905) limits the authority of the Secretaries of the Interior and Agriculture (the Secretaries) to require permits or assess fees for filming or still photography on federal lands (see **Table 1**). For the purposes of the law, federal lands include lands administered by the Bureau of Land Management (BLM), National Park Service (NPS), and U.S. Fish and Wildlife Service (FWS) in the Department of the Interior (DOI) and by the U.S. Forest Service (FS) in the Department of Agriculture (USDA). The EXPLORE Act generally prohibits the Secretaries from requiring a permit or fee for activities that involve fewer than six individuals or that are incidental to, or documenting, other authorized activities (e.g., weddings, sporting events). The law also directs the Secretaries to establish a *de minimis use authorization* for certain filming and photography activities that involve six to eight individuals. Pursuant to the law, a de minimis use authorization is not considered a permit and the Secretaries are prohibited from charging a fee in issuing such authorizations.

Individuals or groups seeking to conduct filming or photography activities on federal lands without a permit or under a de minimis use authorization must meet certain requirements. Among other requirements, filming and photography activities must not

- "disturb or negatively impact" natural or cultural resources or environmental or scenic values,
- "impede or intrude on" the experience of other visitors,
- be located in an area or site that is closed to the public or receives a "very high volume of visitation,"
- use set or staging equipment (hand-held equipment is generally allowed), or
- be likely to result in additional administrative costs incurred by the relevant agency.

For filming and photography activities that do not meet these requirements or that involve more than eight individuals, the Secretaries are authorized—but not required—to issue permits and assess a *reasonable fee* for such uses (see "Fees and Cost Recovery").

The EXPLORE Act explicitly prohibits the Secretaries from allowing filming or photography on federal lands in certain scenarios. Such scenarios include ones in which there is a likelihood the activity would "cause resource damage" (a potentially higher standard than "disturb or negatively impact" resources), unreasonably disrupt public use and enjoyment of a site, or pose health and safety risks (16 U.S.C. §460*l*-6d(c) and 54 U.S.C. §100905(c)).

Table 1. DOI/USDA Filming and Photography Requirements: Crew Size

Number of People	Typical Requirement
1-5 people	No permit/No fee
6-8 people	De minimis use authorization/No fee
9+ people	Permit and fee may be required

Source: Expanding Public Lands Outdoor Recreation Experiences Act (P.L. 118-234).

Notes: Filming and photography activities also must comply with the relevant policies and regulations of the land unit in question, as well as all applicable federal, state, and local laws. These include laws pertaining to the use of unmanned aerial equipment (e.g., drones) and any restrictions on commercial enterprise within wilderness areas, as established in the Wilderness Act (16 U.S.C. §§1131-1136).

Fees and Cost Recovery

If the Secretaries determine that a permit is required for a given activity, permitting fees may be assessed. Permitting 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 EXPLORE Act also requires fees to provide a *fair return* (undefined in the law) to the United States for the activity. In addition, agencies are required to recover any administrative, personnel, or other costs incurred by the agencies during filming for activities requiring a permit.

Fees and costs collected are to be made available for use by the collecting agencies without further appropriation.

Historically, the majority of funds have been retained at the site at which they were collected and used for purposes such as backlogged repair and maintenance projects, interpretation, signage, facility enhancement, resource preservation, fee collection, and law enforcement.

Commercial vs. Noncommercial Activities

Prior to the enactment of the EXPLORE Act, federal law (P.L. 106-206) distinguished between *commercial* filming and photography and *noncommercial* activities. Only commercial activities were required to obtain a permit in advance of filming or shooting on federal lands. Implementing regulations promulgated by DOI defined commercial filming as activities conducted "for a market audience with the intent of generating income" (78 *Federal Register* 52087). FS regulations defined commercial filming to be activities involving "the advertisement of a product or service, the creation of a product for sale, or the use of models, actors, sets, or props" (69 *Federal Register* 41965). In general, both the DOI agencies and FS excluded filming and photography for news-gathering purposes from these definitions.

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 found that by requiring a permit and fee only for commercial activities, NPS was effectively imposing a content-based restriction on expressive speech. The court held that this restriction did not satisfy the "heightened" legal test for speech restrictions in a public forum and issued an injunction preventing the enforcement of P.L. 106-206 and the implementing regulations promulgated pursuant to that statute (*Price v. Barr et al.*, 514 F. Supp. 3d 171, 187-93 (D.D.C. 2021)). In August 2022, an appellate court reversed the 2021 decision. The appellate court agreed that at least some of the public lands were public forums but declined to apply the traditionally "speech-protective rules" that accompany that designation, reasoning that filmmaking "involves merely a noncommunicative step in the production of speech." The court held that regulation of commercial filming on federal lands was subject only to a "reasonableness" standard and that the agency's permitting program met that standard (*Price v. Garland*, 45 F.4th 1059, 1068, 1072 (D.C. Cir. 2022)). In June 2024, a federal district court in another circuit held that the permit and fee regulations likely violated the First Amendment, preliminarily enjoining their enforcement against a nonprofit whose members film on public lands. In the court's view, while the issues presented a "difficult case," the "speaker-based distinction" for news organizations suggested a content preference and may not have been "sufficiently tailored" to the government's interests—a standard the court applied after concluding that recording a film is itself expressive activity (*Blueribbon Coalition v. Garland*, 737 F. Supp. 3d 1003, 1013, 1019-20 (D. Idaho 2024)). For more information, see CRS In Focus IF12308, *Free Speech: When and Why Content-Based Laws Are Presumptively Unconstitutional*, by Victoria L. Killion.

With the enactment of the EXPLORE Act, federal land management agencies no longer distinguish between commercial and noncommercial filming or photography. Instead, the law applies to "any video, still photograph, or audio recording for commercial or noncommercial content creation" regardless of distribution platform (16 U.S.C. §460*l*-6d(a)(6) and 54 U.S.C. §100905(a)(6)). It specifies that the permissibility of the filming or still photography activity is not affected by whether an individual receives monetary compensation. Filming and photography for news-gathering purposes are not explicitly addressed in the law; however, interim guidance issued by NPS indicates that such activities are not treated differently.

Issues for Congress

Prior to enactment of the EXPLORE Act, some stakeholders advocated for a permitting system that regulated based on the impact of the activity rather than whether such activity was commercial in nature. Proponents of these changes pointed, in part, to the rise in social media and smartphone technology as factors requiring a change to agency regulation. For example, agencies may not be able to effectively monitor whether the increasing number of small-scale content creators are complying with agency permitting requirements or to effectively distinguish between what constitutes commercial versus noncommercial content. Others asserted that online influencers creating paid content with a smartphone should not be regulated in the same manner as large-scale film productions.

How the EXPLORE Act might be implemented by federal land management agencies or interpreted by courts may be of interest to Congress moving forward. As of March 2025, agencies had yet to promulgate new regulations implementing the law. Should agencies issue new regulations, they might develop interpretations of certain undefined terms or phrases in the EXPLORE Act. For example, agencies may choose to define what it means for filming or photography activities to "impede or intrude on" the experience of other visitors, or they may set out how to determine whether an activity takes place in an area that receives a "very high volume of visitation." Litigation over the previous regulations suggests that courts may not be aligned on how to evaluate the constitutionality of speech restrictions affecting recording on public lands.

More generally, the role or value of filming and photography on federal lands has led to debates among stakeholders. Some have suggested that social media and online content creation has led to resource degradation and, at times, the promotion of illegal or dangerous activities. Others see filming and photography as potentially beneficial to promoting federal lands to new visitors. In particular, some have pointed to social media as an effective tool to bring in traditionally underrepresented communities or groups or instill a sense of stewardship among new generations visiting federal lands. As smartphone technology and online content creation evolve, these issues may continue to be of interest to Congress.

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