

*Example. (i) Facts.* Employer sponsors a profit-sharing plan qualified under section 401(a). The plan provides solely for non-elective employer profit-sharing contributions. The plan's trustee enters into a contract with a third-party insurance carrier to provide health insurance for certain plan participants. The insurance policy provides for the payment of medical expenses incurred by those participants. The plan limits the amounts used to provide medical benefits with respect to a participant to 25 percent of the funds held in the participant's account. The trustee makes monthly payments of \$1,000 to pay the premiums due for Participant A's health insurance. The trustee also reduces Participant A's account balance by \$1,000 at the time of each premium payment. In June of a year, Participant A is admitted to the hospital for covered medical care, and in July of the same year, the health insurer pays the hospital \$5,000 for the medical care provided to Participant A in June.

(ii) *Conclusion.* Under paragraph (e)(1) of this section, each of the trustee's payments of the \$1,000 constitutes a distribution under section 402(a) to Participant A on the date of each payment. To the extent provided under section 213, the amount of these distributions constitutes payments for medical care. The \$5,000 payment to the hospital is excludable from Participant A's gross income under section 104(a)(3) and is not treated as a distribution from the plan.

**Par. 8.** Section 1.402(c)-2 is amended by redesignating paragraph A-4(h) as paragraph A-4(i) and adding a new paragraph A-4(h) to read as follows:

**§ 1.402(c)-2 Eligible rollover contributions; questions and answers.**

\* \* \* \* \*

A-4: \* \* \*

(h) Distributions of premiums for accident or health insurance under § 1.402(a)-1(e).

\* \* \* \* \*

**Par. 9.** Section 1.403(a)-1 is amended by revising paragraph (g) to read as follows:

**§ 1.403(a)-1 Taxability of beneficiary under a qualified annuity plan.**

\* \* \* \* \*

(g) The rules of § 1.402(a)-1(e) apply for purposes of determining the treatment of amounts paid to provide accident and health insurance benefits.

**Par. 10.** Section 1.403(b)-6 is amended by adding a sentence following the first sentence of paragraph (g) to read as follows:

**§ 1.403(b)-6 Timing of distributions and benefits.**

\* \* \* \* \*

(g) *Death benefits and other incidental benefits.* \* \* \* The rules of § 1.402(a)-1(e) apply for purposes of determining when incidental benefits are treated as distributed and included

in gross income. See §§ 1.72-15 and 1.72-16. \* \* \*

**Linda E. Stiff,**  
Acting Deputy Commissioner for Services and Enforcement.  
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**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 5**

**Office of the Secretary**

**43 CFR Part 5**

**Fish and Wildlife Service**

**50 CFR Part 27**

**RIN 1024-AD30**

**Making Motion Pictures, Television Productions, Soundtracks or Taking Still Photographs on Certain Areas Under the Jurisdiction of the Department of the Interior**

**AGENCY:** National Park Service, Office of the Secretary, Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Interior (DOI) proposes to revise its filming regulations to implement legislation that directs establishment of reasonable fees for commercial filming activities or similar projects, such as still photography, and to respond to applicants for commercial filming or still photography permits in a timely manner.

**DATES:** Written comments will be accepted through October 19, 2007.

**ADDRESSES:** You may submit comments, identified by the number 1024-AD30, by any of the following methods:

—Federal rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

—Mail: Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street, NW., ORG CODE 2460, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street, NW., ORG CODE 2460, Washington, DC 20240, telephone: 202-513-7092, or e-mail: [Lee\\_Dickinson@nps.gov](mailto:Lee_Dickinson@nps.gov).

**SUPPLEMENTARY INFORMATION:** Public Law 106-206 (codified at 16 U.S.C.

460l-6d) directs the Secretaries of the Interior and Agriculture to establish a reasonable fee system (location fees) for commercial filming and still photography activities on lands under the Secretaries' jurisdiction. The law necessitates that the Department of the Interior (DOI) revise the existing regulations at 43 CFR part 5 prohibiting the National Park Service and the Fish and Wildlife Service from collecting fees for commercial film productions. When finalized, this proposed regulation will be the primary regulation governing commercial filming and still photography activities for the following DOI agencies: The Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS). While 16 U.S.C. 460l-6d authorizes agencies of the DOI to collect location fees, to date only the BLM, FWS, and NPS have decided to proceed with regulations allowing the agencies to collect and retain location fees. If in the future additional DOI agencies decide to collect location fees, then this regulation may be adopted by those agencies without significant modification.

**Background**

Lands of the United States were set aside by Congress and Executive order or otherwise acquired to conserve and protect areas of untold beauty and grandeur, historical importance, and uniqueness for future generations. Often it is the uniqueness of the land that attracts filmmakers. This tradition started with explorers who traveled with paint and canvas or primitive photo apparatus before the areas were designated as a national park, refuge, or forest. Generally, land management agencies allow commercial filming and still photography when it is consistent with their mission and will not harm the resource or interfere with the visitor experience.

While many commercial filming and still photography permits issued by the land management agencies are for small productions involving educational material or commercial advertising, a significant number of commercial filming permits have been issued to makers of major motion pictures.

Public Law 106-206 augments previous statutes authorizing commercial filming and still photography permits and establishes limitations for filming activities. While commercial filming and still photography are activities generally allowed on Federal lands, in many circumstances it is in the Government's interest to manage the activity through a permitting process to minimize the

possibility of damage to the cultural or natural resources or interference with other visitors to the area.

This regulation standardizes the collection of location fees by DOI agencies. Currently, while NPS and FWS do not collect location fees for commercial filming or still photography, BLM collects and retains location fees for the use of their lands (43 CFR 2920.8). This proposed regulation allows DOI agencies to collect a location fee and to retain and use the money collected in accordance with the formula and purposes established for the Department's Recreational Fee Demonstration Program (Pub. L. 104-134). The formula currently provides that at least 80 percent of the fee collected remains in the unit where it was collected.

This regulation lays out the criteria for establishing location fees, including the number of people on site, duration (number of days) of the permitted activity, and amount and type of equipment present, as specified in statute. Actual fee amounts will be determined separately under a location fee schedule to be developed later by the DOI agencies covered by this regulation and the U.S. Forest Service (USFS). This schedule will be based on the current schedules used by BLM and USFS, public comments a draft location fee schedule previously proposed by NPS, and conversations with State and local film commissioners and industry representatives. Revised location fee schedules will be published in the **Federal Register** for public comment. Once we have analyzed comments on the revised location fee schedules, we will publish a notice of final location fee schedules in the **Federal Register**. These schedules will then be available for use by other DOI bureaus and Federal agencies, should they choose to do so. The schedules will be reevaluated periodically on a timetable to be set by the agencies using the schedule.

The expanded guidance provided in Public Law 106-206 is now proposed as subpart A of 43 CFR part 5, with the section governing areas administered by the Bureau of Indian Affairs, currently designated as § 5.2, now proposed as subpart B. The unnumbered paragraphs of § 5.2 have been numbered in the proposed subpart to allow for easier reference. In addition, a technical correction was made changing 25 CFR part 131 to 25 CFR part 162. We have also revised the NPS regulations in 36 CFR 5.5, and amended the current reference in the FWS regulations in Title 50 to conform to the proposed regulations in 43 CFR part 5.

*Key Issues*

Due to differences in regulations and policy, the three DOI land management agencies each have different approaches to managing commercial filming and still photography activities on their land. The types of commercial filming and still photography activities currently needing a permit vary from agency to agency, and only one DOI agency collects a location fee. The BLM currently charges a location fee for some commercial filming, but the NPS and FWS are currently prohibited by 43 CFR 5.1(b) from charging a location fee. The NPS and BLM recover the costs associated with issuing the permit from the permit holder. In addition, BLM state offices determine the location fee schedules for that State. This lack of consistency between the agencies creates confusion on the part of the filming and photography industry.

This proposed regulation defines commercial filming and still photography (Section 5.2) and explains which activities require a permit (Section 5.3), thereby ensuring consistency among DOI agencies. The proposed regulation identifies circumstances when an agency may not issue a permit, with six factors that agencies must take into account when evaluating an application for a permit (Section 5.4). This proposed regulation also allows each of the DOI agencies to impose reasonable permit conditions to mitigate the impact of the activity on the resource and visitor use and enjoyment (Section 5.5). A violation of a permit condition would allow the issuing agency to revoke the permit. This proposed regulation also explains the financial responsibilities of the permit holder, including payment of the location fee, reimbursement of any costs incurred by the agency due to the processing of the application and monitoring of the permitted activity, and the necessary liability insurance and surety bonds (Section 5.6).

**Section-by-Section Analysis of Proposed 43 CFR Part 5**

The following organizational summary has been prepared to assist in the location and analysis of the proposed revisions.

NUMBERING OF PROPOSED 43 CFR PART 5

Existing 43 CFR Part 5	Proposed 43 CFR Part 5
5.1(a) .....	5.3 Permit.
5.1(b) .....	5.6 Liability/Bonding.
5.1(c) .....	5.5 Permit Conditions.
5.1(d) .....	Deleted.

NUMBERING OF PROPOSED 43 CFR PART 5—Continued

Existing 43 CFR Part 5	Proposed 43 CFR Part 5
	New Sections: 5.1 Scope. 5.2 Terms. 5.4 No Permit. 5.7 Costs. 5.8 Process Time.

*Section 5.1 What does this subpart cover?*

This subpart contains the regulations for issuing permits for commercial filming and still photography in units of the NPS, FWS, and BLM in the DOI. It is possible that additional agencies of the DOI will adopt this regulation should the agency decide to collect location fees and cost recovery as authorized by Public Law 106-206. The only modification needed for additional agencies to adopt this regulation would be to modify the definition of "agency."

*Section 5.2 How are the terms defined in this subpart?*

This section provides the definitions needed to understand the regulation, including definitions for agency, commercial filming, cost recovery, location fee, and still photography.

*Section 5.3 When do I need a permit for commercial filming or still photography?*

Public Law 106-206 augments previous statutes for authorizing commercial filming and still photography activities and provides protections for the affected Federal lands. The law clarifies the requirements for commercial filming and still photography permits and establishes limitations for filming activities. While commercial filming and still photography are activities generally allowed on Federal lands, in many circumstances it is in the Government's interest to manage the activity through a permitting process to minimize the possibility of damage to the cultural or natural resources or interference with other visitors to the area. A person seeking a permit should contact the manager of the site for which the permit is sought to learn how and where to apply.

All commercial filming on lands under DOI jurisdiction requires a permit. This section details those instances and lists specific criteria that trigger the need for a still photography permit, such as the use of models, sets, or props or requesting access to an area to photograph which is, at that time, not

open to the general public. While filming and still photography activities by visitors (as opposed to commercial filmmakers or commercial photographers) generally do not require a permit, this section details those instances and lists specific criteria that trigger the need for a filming or still photography permit. These criteria include the use of models, sets, or props or requesting access to an area to film or photograph which is, at that time, not open to the general public. News coverage also does not need a permit, but is subject to time, place, and manner restriction, if warranted, to maintain order and ensure the safety of the public and the media, and protect natural and cultural resources.

*Section 5.4 Under what circumstances will an agency not issue a permit for commercial filming or still photography?*

The DOI agencies covered under this regulation will issue a permit, except when there is the likelihood that the activity will (1) Damage the resource, (2) cause unreasonable disruption or conflict with the public's use and enjoyment of the site, (3) pose public health or safety risks, (4) impair park resources or values, (5) be inappropriate or incompatible with the purpose of the refuge, or (6) violate other applicable laws or regulations. In some cases, a permit could be issued after terms and conditions are added to the permit to mitigate negative impacts.

*Section 5.5 What type of permit conditions will the agency impose?*

One important aspect of a commercial filming or still photography permit is the inclusion of terms and conditions that will protect the natural and cultural resources, ensure that visitor use and enjoyment is not affected, and protect public health and safety. Permit terms and conditions will be included to mitigate any possible damage to the resources and to guarantee the restoration of Federal lands should that be necessary. The permit is a legal agreement between the Federal agency and the permit holder, who is legally bound to adhere to the terms and conditions of the permit. The permit may be revoked if the permit terms or conditions are violated.

*Section 5.6 What are my liability and bonding requirements?*

The permit holder is required to acquire appropriate insurance, including property and personal and public liability insurance. Permit holders must fully indemnify and hold harmless the United States for any

damage or injury incurred in connection with the permitted activity. Permit holders are also responsible for restoring and repairing the area used for the permitted activity and providing security in the form of a bond or other instrument that would guarantee restoration and repair.

*Section 5.7 What expenses will I incur?*

Fees are divided into two categories: a fee for commercial filming activities, similar projects or still photography (location fee) and cost recovery. The location fee is basically rent; i.e., a payment for the use of the land. Cost recovery reimburses the agency for all costs incurred in the receiving of the application, processing the request, and monitoring the permitted activity.

The cost of location fees will depend upon the number of people on site, duration (number of days) of the permitted activity, and amount and type of equipment present, as specified in statute. Actual fee amounts will be determined separately under a location fee schedule to be developed later by the DOI agencies (and possibly USDA's Forest Service) covered by this regulation. This schedule will be based on schedules currently being used by BLM and the U.S. Forest Service and public comments previously received by NPS on a draft location fee schedule. On December 14, 2000 (65 FR 78186), the NPS published a "Notice of Availability of Draft Fee Schedules and Guidance for Commercial Filming in Compliance with Public Law 106-206 To Apply in All Units of the National Park Service." We received 34 comments from the public as well as 9 comments from NPS personnel. Subsequently, additional conversations were held with managers of non-federally managed sites, both cultural and natural, as well as conversations with State and local film commissioners and industry representatives. Public Law 106-206 directed the agencies to recover any costs incurred by the agency as a result of the permitting of commercial filming or still photography activities, including, but not limited to, administrative and personnel costs. Recovery of costs is in addition to any location fees that might be charged. We will recover costs any time an application is submitted, and the amount should cover all costs of processing the request and monitoring the permitted activities. Cost recovery will be charged for processing a request even if the request is denied, since the agency incurred costs in processing the application and reaching a decision.

*Section 5.8 How long will it take to process my request?*

Under Public Law 106-206, Federal agencies are required to establish a process to ensure that permit applications are processed in a timely manner. Each DOI agency will develop a written checklist of the application and review process which will include a timeline to be followed by that agency. While processing times may vary significantly based on the complexity of the commercial filming or still photography request, a checklist will ensure that similar application and processing procedures are used throughout each agency on similar requests and that the application is efficiently processed to minimize the time it takes to consider a request. Early consultation with the appropriate agency on the part of a potential applicant will also aid in processing the application in a timely manner once it is submitted. The process used and the appropriate application forms will be available on request at all field offices and on the Internet.

*Sections 5.15 Through 5.18*

These sections apply only to the Bureau of Indian Affairs (BIA) and are currently paragraphs (a) through (d) of § 5.2. While we propose no substantive changes to any of these sections, we have:

- (1) Made each paragraph into a section;
- (2) Given each section a heading in the form of a question;
- (3) Updated a reference to 25 CFR part 131 to refer the reader to 25 CFR part 162; and
- (4) Made a few additional minor formatting and wording changes.

**Compliance with Laws, Executive Orders, and Department Policy**

*Regulatory Planning and Review (Executive Order 12866)*

This document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants,

user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule is following the direction of Congress by implementing the provisions of Public Law 106–206. OMB has determined that this rule raises novel legal or policy issues. The rule proposes to institute a new schedule of fees for private industry for commercial filming and still photography activities that receive permits for the use of Federal lands managed by several DOI agencies. The potential number of areas and businesses affected by this proposed regulation could generate a number of comments.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the report titled, “Benefit-Cost/Unfunded Mandates Act Analysis Small Business and Regulatory Flexibility Act Analysis” (U.S. Department of the Interior, Office of Policy Analysis, Office of the Secretary). This report is available from the NPS by writing to Lee Dickinson at the addresses listed in the section above under **ADDRESSES**.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications.

#### *Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the order.

#### *Paperwork Reduction Act*

This proposed regulation requires individuals and companies wishing to do commercial filming and still photography on public lands to obtain a permit from the agency managing the public land. The permit holder is also responsible for reimbursing the agency for costs incurred and to pay a land use fee. The mechanics of applying for the permit and the forms involved are not addressed in this proposed regulation, but are addressed in existing agency regulations and internal guidance. The NPS uses application forms NPS 10–931 (Film—Short Form) and NPS 10–932 (Film—Long Form). Both forms are assigned OMB Control Number 1024–0026 and expire March 31, 2010. The BLM uses OMB-approved BLM Form 2920–1 (Land Use Application and Permit), which is assigned OMB Control Number 1004–0009 and expires December 31, 2007. The FWS National Wildlife Refuge System currently uses two forms for special use permits on refuges: FWS Form 3–1383 (Special Use Permit Application on National Wildlife Refuges Outside Alaska), for which the OMB Control Number is 1018–0102 and the OMB approval expires January 31, 2008, and FWS Form 3–2001 (Special Use Permit Application on National Wildlife Refuges in Alaska), for which the OMB Control Number is 1018–0014 and the OMB approval expires September 30, 2006. Therefore, these regulations do not contain information collection requirements that the OMB must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

#### *National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment, health, and safety because it is not expected to:

- (a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses that might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared.

The location fee authorized by Public Law 106–206 and governed by this proposed regulation is a fee collected when a permit is issued by the responsible agency for a commercial filming or still photography activity. Any analysis required by the NEPA, as well as the National Historic Preservation Act, would be conducted in conjunction with the permitting process and would evaluate the impact of the requested activity on the resource.

#### *Government-to-Government Relationship With Tribes*

In accordance with Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249), the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22961), and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

#### *Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A “section” appears in bold type and is preceded by the symbol “§” and a numbered heading; for example § 14.10 Purpose). (5) Is the description of the rule in the “Supplementary Information” section of the preamble helpful in understanding the proposed rule? What else could we

do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, DOI, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

**Drafting Information:** The primary authors of this regulation are Lee Dickinson, Special Park Uses Program Manager, Jerry Case, Regulations Program Manager, National Park Service, Washington DC; Vanessa Engle, Program Lead Commercial Filming and Still Photography, Bureau of Land Management, Washington DC; and Rebecca Halbe, National Fee Program Coordinator, U.S. Fish and Wildlife Service, Washington DC.

### Public Participation

You may submit comments, identified by the number RIN 1024-AD30, by any of the following methods:

- Federal rulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting electronic comments.
- You may mail or hand deliver comments to National Park Service, Attn: Lee Dickinson, Special Park Uses Program Manager, 1849 C Street, NW., ORG CODE 2460, Washington, DC 20240.*

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

### List of Subjects

#### 36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Transportation, Motion pictures.

#### 43 CFR Part 5

Motion pictures, Recordings, Television.

#### 50 CFR Part 27

##### Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend part 5 of title 36, part 5 of title 43, and part 27 of title 50 of the Code of Federal Regulations as follows:

### Title 36—Parks, Forests, and Public Property

#### CHAPTER I—NATIONAL PARK SERVICE, DOI

### PART 5—COMMERCIAL AND PRIVATE OPERATIONS

1. The authority citation for part 5 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 17j–2, 462.

2. Section 5.5 is revised to read as follows:

#### § 5.5 Commercial filming and still photography.

Commercial filming and still photography are subject to the provisions of the special regulations contained in part 5, subpart A, title 43 of the Code of Federal Regulations.

#### Title 43—Public Lands: Interior

##### Subtitle A—Office of the Secretary of the Interior

3. Part 5 is revised to read as follows:

### PART 5—MAKING MOTION PICTURES, TELEVISION PRODUCTIONS, OR SOUNDTRACKS OR TAKING STILL PHOTOGRAPHS ON CERTAIN AREAS UNDER THE JURISDICTION OF THE DEPARTMENT OF THE INTERIOR

#### Subpart A—Areas Administered by the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management

Sec.

- 5.1 What does this subpart cover?
- 5.2 How are terms defined in this subpart?
- 5.3 When do I need a permit for commercial filming or still photography?
- 5.4 Under what circumstances will an agency not issue a permit for commercial filming or still photography?
- 5.5 What type of permit conditions will the agency impose?
- 5.6 What are my liability and bonding requirements?
- 5.7 What expenses will I incur?
- 5.8 How long will it take to process my request?

#### Subpart B—Areas Administered by the Bureau of Indian Affairs

- 5.15 When must I ask permission from individual Indians to conduct filming and photography?
- 5.16 When must I ask permission from Indian groups and communities?
- 5.17 When must I get a lease or permit?
- 5.18 What wages must I pay to Indian employees?

**Authority:** 5 U.S.C. 301; 16 U.S.C. 1–3, 3a, 668dd–ee, 715i, 460l–6d; 25 U.S.C. 2; 43 U.S.C. 1701, 1732–1734, 1740.

### Subpart A—Areas Administered by the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management

#### § 5.1 What does this subpart cover?

This subpart covers commercial filming and still photography activities on the Federal lands and waters administered by the Bureau of Land Management, the National Park Service, and the U.S. Fish and Wildlife Service.

#### § 5.2 How are terms defined in this part?

The following definitions apply to this part:

*Agency, we, our, or us* means the Bureau of Land Management, the National Park Service, and the U.S. Fish and Wildlife Service office responsible for the administration of lands and waters that are under its respective jurisdiction. (This definition may be expanded as additional agencies in the DOI choose to collect location fees for commercial filming and still photography on the lands under their jurisdiction.)

*Commercial filming* means the digital or film recording of a visual image or sound recording by a person, business, or other entity for a market audience, such as for a documentary, television or feature film, advertisement, or similar project. It does not include news coverage or visitor use.

*Cost recovery* is the money that the agency collects as reimbursement for the costs incurred by the agency in accepting and processing an application and in monitoring the permitted commercial filming or still photography activity.

*Location fee* means a land or facility use fee similar to rent that provides a fair return to the United States for the use of Federal lands or facilities when used for commercial filming activities or similar projects and still photography activities where a permit is required.

*Permit* means a written authorization by us to engage in uses or activities that are otherwise prohibited or restricted.

*Resource damage*, as applied to BLM lands, means harm to the land or its resources that cannot reasonably be mitigated or reclaimed.

*Still photography* means the capturing of a still image on film or in a digital format.

#### § 5.3 When do I need a permit for commercial filming or still photography?

(a) All commercial filming requires a permit.

(b) Still photography requires a permit if:

(1) It takes place at location(s) where or when members of the public are generally not allowed; or

(2) It uses model(s), sets(s), or prop(s) that are not a part of the location's natural or cultural resources or administrative facilities; or

(3) The agency would incur additional administrative costs to monitor the activity; or

(4) The agency would need to provide management and oversight to:

(i) Avoid impairment or incompatible use of the resources and values of the site; or

(ii) Limit resource damage; or

(iii) Minimize health or safety risks to the visiting public.

(c) News coverage does not require a permit, but is subject to time, place, and manner restrictions, if warranted, to maintain order and ensure the safety of the public and the media, and protect natural and cultural resources.

(d) Use of film, video, or still photography equipment by visitors does not require a permit as long as the activity occurs in areas designated for public use during public hours.

(e) For information on how to obtain a permit application and where and how to submit it, contact the site manager for the location at which you seek a permit to film.

**§ 5.4 Under what circumstances will an agency not issue a permit for commercial filming or still photography?**

(a) We will issue a permit authorizing commercial filming or still photography, EXCEPT if we determine that:

(1) There is the likelihood that resource damage would occur that cannot be mitigated or restored under the terms and conditions of a permit; or

(2) There is the likelihood of unreasonable disruption of or conflict with the public's use and enjoyment of the site; or

(3) There is the likelihood that the activity poses health or safety risks to the public; or

(4) There is the likelihood that the activity would result in the impairment of park resources or values;

(5) The activity is inappropriate or incompatible with the purpose of the refuge; or

(6) The requested activity will violate any other applicable Federal, State, or local law or regulation.

(b) [Reserved]

**§ 5.5 What type of permit conditions will the agency impose?**

(a) We may impose permit conditions including, but not limited to, conditions intended to:

(1) Protect the site's values, purposes, and resources, and public health and safety; or

(2) Prevent unreasonable disruption of the public's use and enjoyment.

(b) We may revoke your permit if you violate a permit condition.

**§ 5.6 What are my liability and bonding requirements?**

(a) You are fully liable for any damage or injury incurred in connection with the activity, and you must fully indemnify and hold harmless the United States. You must obtain an appropriate property damage, personal injury, and public liability insurance policy sufficient to protect the United States Government from liability or other claims arising from activities under the permit. The insurance policy must name the United States as an additional insured.

(b) You are responsible for repair and restoration costs if your activity causes resource damage to an area. We may also require you to provide a bond or other security satisfactory to secure any other obligations you may have under the permit and applicable laws and regulations. The bond must be in an amount sufficient to provide full payment for the costs of restoration, reclamation, or rehabilitation of the lands in the event that your activity causes resource damage to an area. If the cost of the repairs exceeds the amount of your bond, you will also be responsible for the additional amount.

**§ 5.7 What expenses will I incur?**

(a) *Location fee.* (1) For commercial filming and still photography permits, we will require a reasonable location fee that provides a fair return to the United States. The location fee will be based upon the following criteria:

(i) The number of days your activity takes place;

(ii) The size of the film crew;

(iii) The amount and type of equipment present; and

(iv) Comparable location fees charged by other Federal, State, and local government agencies and the private sector.

(2) The location fee charged is in lieu of any entrance or other special use fees. However, the location fee is in addition to any cost recovery amount assessed in paragraph (b) of this section.

(3) We will assess location fees in accordance with a fee schedule, to be published in the **Federal Register** and made available on the Internet and at our field offices.

(b) *Cost recovery.* You must reimburse the agency for actual costs incurred in processing your request and

administering your permit. Cost recovery will be based upon our direct and indirect expenses including, but not limited to, administrative and personnel costs for application processing, preproduction meetings and other activities, and on-site monitoring of permitted activities.

**§ 5.8 How long will it take to process my request?**

The DOI is committed to ensuring that the agencies process permit applications for commercial filming and still photography permits in a timely manner. Each agency is responsible for developing its own system for administering the permit application process. For specific information on application procedures, contact the appropriate agency field office.

**Subpart B—Areas Administered by the Bureau of Indian Affairs**

**§ 5.15 When must I ask permission from individual Indians to conduct filming and photography?**

Anyone who desires to go on to the land of an Indian to make pictures, television productions, or soundtracks is expected to observe the ordinary courtesy of first obtaining permission from the person(s) and of observing any conditions attached to this permission.

**§ 5.16 When must I ask permission from Indian groups and communities?**

Anyone who desires to take pictures, including motion pictures, or to make a television production or a soundtrack of Indian communities, churches, kivas, plazas, or ceremonies performed in these places, must:

(a) Obtain prior permission from the proper officials of the place or community; and

(b) Scrupulously observe any limitations imposed by the officials who grant the permission.

**§ 5.17 When must I get a lease or permit?**

If filming pictures or making a television production or a soundtrack requires the actual use of Indian lands, you must obtain a lease or permit under 25 CFR part 162.

**§ 5.18 What wages must I pay to Indian employees?**

Any motion picture or television producer who obtains a lease or permit for the use of Indian land under 25 CFR part 162 must pay a fair and reasonable wage to any Indian employed in connection with the production.

**Title 50—Wildlife and Fisheries****SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM****PART 27—PROHIBITED ACTS****Subpart G—Disturbing Violations: Light and Sound Equipment**

4. The authority citation for part 27 continues to read as follows:

**Authority:** Sec. 2, 33 Stat. 614, as amended (16 U.S.C. 685); Sec. 5, 43 Stat. 651 (16 U.S.C. 725); Sec. 5, Stat. 449 (16 U.S.C. 690d); Sec. 10, 45 Stat. 1224 (16 U.S.C. 715i); Sec. 4, 48 Stat. 402, as amended (16 U.S.C. 664); Sec. 2, 48 Stat. 1270 (43 U.S.C. 315a); 49 Stat. 383 as amended; Sec. 4, 76 Stat. (16 U.S.C. 460k); Sec. 4, 80 Stat. 927 (16 U.S.C. 668dd) (5 U.S.C. 685, 752, 690d); 16 U.S.C. 715s).

5. Section 27.71 is revised to read as follows:

**§ 27.71 Motion pictures, sound recordings, and still photography.**

The filming of any motion picture or taking of sound recordings or still photography on a national wildlife refuge for subsequent commercial use is prohibited except as may be authorized under the provisions of 43 CFR part 5.

Dated: March 22, 2007.

**P. Lynn Scarlett,**

*Deputy Secretary of the Interior.*

**Editorial Note:** The Office of the Federal Register received this document on August 8, 2007.

[FR Doc. E7-15845 Filed 8-17-07; 8:45 am]

**BILLING CODE 4312-70-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 97**

[EPA-R04-OAR-2007-0229-200713(b); FRL-8453-7]

**Approval of Implementation Plans of Tennessee: Clean Air Interstate Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is approving revisions to the Tennessee State Implementation Plan (SIP) submitted on September 8, 2006. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) concerning Sulfur Dioxide (SO<sub>2</sub>), Nitrogen Oxides (NO<sub>x</sub>) annual, and NO<sub>x</sub> ozone season emissions for the State of Tennessee,

promulgated on April 28, 2006, and subsequently revised December 13, 2006. On February 8, 2007, Tennessee requested that EPA only act on a portion of the September 8, 2006 submittal as an abbreviated SIP. Consequently, EPA is approving an abbreviated SIP revision that addresses the methodology to be used to allocate annual and ozone season NO<sub>x</sub> allowances under the CAIR FIPs and opt-in provisions for the SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season trading programs. EPA is not making any changes to the CAIR FIP, but is amending, to the extent EPA approves Tennessee's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before September 19, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-0229, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* [hou.james@epa.gov](mailto:hou.james@epa.gov).
3. *Fax:* (404) 562-9019.
4. *Mail:* EPA-R04-OAR-2007-0229, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.
5. *Hand Delivery or Courier:* James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official

hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R04-OAR-2007-0229. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information, unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you