

#### § 4.1607

shall assemble and transmit to the appeals official a file containing the appealed agency decision and all documents relevant thereto, including the detailed analysis upon which the agency decision was based. At the same time, the Department Counsel shall send to the appellant a copy of the transmittal document, containing a table of contents of the file.

#### § 4.1607 Processing the appeal.

(a) The appeals official shall arrange such conferences with the concerned parties as are necessary, including (if requested by the appellant) an oral presentation.

(b) The appeals official may require either party to submit any additional documents, oral or written testimony, or other items of evidence which he considers necessary for a complete review of the agency decision.

(c) All documentary evidence submitted by one party to the appeal action shall be made available to the other party (or parties), except that availability of proprietary information may be restricted by the party holding the proprietary interest in such information.

#### § 4.1608 Oral presentations.

(a) Upon request of the appellant, an opportunity for an oral presentation to the appeals official shall be granted. The purpose of an oral presentation shall be to permit the appellant to discuss or explain factual evidence supporting his allegations, and/or to obtain oral explanations of pertinent evidence. The time and place of each oral presentation shall be determined by the appeals official, after consultation with the appropriate parties.

(b) The appellant may, but is not required to, be represented by legal counsel at an oral presentation.

(c) The Department Counsel and the bureau/office involved shall be invited to attend any oral presentation. The appeals official may require the attendance and participation of an official or employee of the Department, whether or not requested by the appellant, if, in the appeals official's judgment, such official or employee may possess knowledge or information pertinent to the agency decision being ap-

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pealed, and if this knowledge or information is unobtainable elsewhere.

(d) An oral presentation shall not constitute a judicial proceeding, and no such judicial proceeding or hearing shall be provided for in this appeals process. There shall be no requirement for legal briefs, sworn statements, interrogation under oath, official transcripts of testimony, etc., unless the appeals official determines such are necessary for effective disposition of the appeal.

#### § 4.1609 Multiple appeals.

If two or more appellants submit appeals of the same agency decision, which are based on the same or similar allegations, the appeals official may, at his discretion, consider all such appeals concurrently and issue a single written decision resolving all of the several appeals.

#### § 4.1610 Decision of the appeals official.

(a) Within 30 calendar days after receipt of an appeal by the Office of Hearings and Appeals, the appeals official shall issue a written decision, either affirming or denying the appeal. This decision shall be final, with no judicial review or further avenue of appeal.

(b) If the appeals official affirms the appeal, his decision regarding further action by the agency shall be binding upon the agency.

(c) If it proves impracticable to issue a decision within the prescribed 30 calendar days, the appeals official may extend this period, notifying all concerned parties of the anticipated decision date.

### PART 5—COMMERCIAL FILMING AND SIMILAR PROJECTS AND STILL PHOTOGRAPHY ON CERTAIN AREAS UNDER DEPARTMENT JURISDICTION

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

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SOURCE: 78 FR 52095, Aug. 22, 2013, unless otherwise noted.

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

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

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

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

- (a) All commercial filming requires a permit.
- (b) Still photography does not require a permit unless:
  - (1) It uses a model, set, or prop as defined in § 5.12; or
  - (2) The agency determines a permit is necessary because:

- (i) It takes place at a location where or when members of the public are not allowed; or

- (ii) The agency would incur costs for providing on-site management and oversight to protect agency resources or minimize visitor use conflicts.

- (c) Visitors do not require a permit for filming or still photography activities unless the filming is commercial filming as defined in § 5.12 or the still photography activity involves one of the criteria listed in § 5.2 (b).

##### **§ 5.3 How do I apply for a permit?**

For information on application procedures and to obtain a permit application, contact the site manager at the location at which you seek to conduct commercial filming or still photography activities.

##### **§ 5.4 When is a permit required for news-gathering activities?**

(a) *Permit requirements.* News-gathering activities involving filming, videography, or still photography do not require a permit unless:

- (1) We determine a permit is necessary to protect natural and cultural resources, to avoid visitor use conflicts, to ensure public safety or authorize entrance into a closed area; and
- (2) Obtaining a permit will not interfere with the ability to gather the news.

(b) *Terms and conditions.* All permits issued under this section will include only terms and conditions necessary to maintain order, ensure the safety of the public and the media, and protect natural and cultural resources.

(c) *Exemptions.* A permit issued for news-gathering activities is not subject to location fees or cost recovery charges.

##### **§ 5.5 When will an agency deny a permit for commercial filming or still photography?**

We will deny a permit authorizing commercial filming or still photography if we determine that it is likely that the activity would:

- (a) Cause resource damage;
- (b) Unreasonably disrupt or conflict with the public's use and enjoyment of the site;

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(c) Pose health or safety risks to the public;

(d) Result in unacceptable impacts or impairment to National Park Service resources or values;

(e) Be inappropriate or incompatible with the purpose of the Fish and Wildlife Service refuge;

(f) Cause unnecessary or undue degradation of Bureau of Land Management lands; or

(g) Violate the Wilderness Act (16 U.S.C. 1131–1136) or any other applicable Federal, State, or local law or regulation.

### § 5.6 What type of permit conditions may 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; and

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

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

### § 5.7 What are my liability and bonding requirements as a permit holder?

(a) *Liability.* In accepting a permit, you agree to be fully liable for any damage or injury incurred in connection with the permitted activity, and to indemnify and hold harmless the United States of America as a result of your actions. We may require you to obtain property damage, personal injury, commercial liability or public liability insurance in an amount sufficient to protect the United States from liability or other claims arising from activities under the permit. The insurance policy must name the United States of America as an additional insured.

(b) *Bond.* You are responsible for all response, repair and restoration if your activity causes damage to an area. We may also require you to provide a bond or other security sufficient to secure any obligations you may have under the permit and applicable laws and regulations, including the cost of repair, reclamation, or restoration of the area. The amount of the bond or security must be in an amount sufficient to pro-

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vide full payment for the costs of response and restoration, reclamation, or rehabilitation of the lands in the event that you fail to adequately repair, reclaim, or restore the area as directed by the agency. If the amount of the bond or other security is inadequate to cover cost of the repair, reclamation, or restoration of the damaged lands or resources you will also be responsible for the additional amount.

### § 5.8 What expenses will I incur?

You must pay us a location fee and reimburse us for expenses that we incur, as required in this section.

(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.

(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 and represents a fee for the use of Federal lands and facilities and does not include any cost recovery.

(3) We will assess location fees in accordance with a fee schedule, which we will publish in the FEDERAL REGISTER and also make available on the internet and at agency field offices. The location fee does not include any cost recovery.

(b) *Cost recovery.* You must reimburse us for actual costs incurred in processing your request and administering your permit. We will base cost recovery charges upon our direct and indirect expenses including, but not limited to, administrative costs for application processing, preproduction meetings and other activities, on-site monitoring of permitted activities, and any site restoration.

### § 5.9 How long will it take to process my request?

We will process applications for commercial filming and still photography permits in a timely manner. Processing times will vary depending on the complexity of the proposed activity. A pre-application meeting with agency personnel is encouraged and may assist us in processing your request for a permit

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more quickly. For information on application procedures contact the appropriate agency field office.

### § 5.10 Can I appeal a decision not to issue a permit?

Yes. If your request for a permit is denied, the site manager issuing the denial will inform you of how and where to appeal.

### § 5.11 Information collection.

The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*, and assigned the following OMB clearance numbers: 1024-0026 for the National Park Service, 1004-0009 for the Bureau of Land Management and 1018-0102 for the Fish and Wildlife Service. This information is being collected to provide land managers data necessary to issue permits for commercial filming or still photography permits on Federal lands. This information will be used to grant administrative benefits. The obligation to respond is required in order to obtain a benefit. You may send comments on this information collection requirement to the Departmental Information Collection Clearance Officer, U.S. Department of the Interior, 1849 C Street NW., MS3530, Washington, DC 20240.

### § 5.12 How are terms defined in this subpart?

The following definitions apply to this subpart:

*Agency, we, our, or us* means the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service, as appropriate.

*Commercial filming* means the film, electronic, magnetic, digital, or other recording of a moving image by a person, business, or other entity for a market audience with the intent of generating income. Examples include, but are not limited to, feature film, videography, television broadcast, or documentary, or other similar projects. Commercial filming activities may include the advertisement of a product or service, or the use of actors, models, sets, or props.

*Cost recovery* means the money that an agency collects as reimbursement

for actual costs it incurred to permit a particular activity, including but not limited to, accepting and processing a permit application and 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:

(1) Commercial filming activities or similar projects; and

(2) Still photography activities where a permit is required.

*Model* means a person or object that serves as the subject for commercial filming or still photography for the purpose of promoting the sale or use of a product or service. Models include, but are not limited to, individuals, animals, or inanimate objects, such as vehicles, boats, articles of clothing, and food and beverage products, placed on agency lands so that they may be filmed or photographed to promote the sale or use of a product or service. For the purposes of this part, portrait subjects such as wedding parties and high school graduates are not considered models, if the image will not be used to promote or sell a product or service.

*News* means information that is about current events or that would be of current interest to the public, gathered by news-media entities for dissemination to the public. Examples of news-media entities include, but are not limited to, television or radio stations broadcasting to the general public and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public.

(1) As methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), these alternative media will be considered to be news-media entities.

(2) A freelance journalist is regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, even if the journalist is not actually employed by the entity. A

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contract would present a solid basis for such an expectation; we may also consider the past publication record of the requester in making such a determination.

*News-gathering activities* means filming, videography, and still photography activities carried out by a representative of the news media.

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

*Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

*Resource damage* means harm to the land or its natural or cultural resources that cannot reasonably be mitigated or reclaimed.

*Sets and props* means items constructed or placed on agency lands to facilitate commercial filming or still photography including, but not limited to, backdrops, generators, microphones, stages, lighting banks, camera tracks, vehicles specifically designed to accommodate camera or recording equipment, rope and pulley systems, and rigging for climbers and structures. Sets and props also include trained animals and inanimate objects, such as camping equipment, campfires, wagons, and so forth, when used to stage a specific scene. The use of a camera on a tripod, without the use of any other equipment, is not considered a prop.

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

*Videography* means the process of capturing moving images on electronic media, e.g., video tape, hard disk or solid state storage.

### 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 cour-

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tesy of first obtaining permission from the Indian 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.

## PART 6—PATENT REGULATIONS

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