

**STATEMENT OF
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UNITED STATES DEPARTMENT of AGRICULTURE**

**BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
APRIL 28, 2010**

CONCERNING

**S. 1241
TO AMEND PUBLIC LAW 106-206**

Mr. Chairman and members of the subcommittee, thank you for the opportunity to be here today and provide the Department of Agriculture's views on S. 1241.

S. 1241 would direct the Secretaries of the Interior and Agriculture to require annual permits and assess annual land use fees for commercial filming on federal lands involving a crew of 5 persons or fewer.

Specifically, the bill would require permits for commercial filming involving a crew of 5 persons or fewer that would cover filming in areas designated for public use on federal lands during a 12-month period. In addition, the bill

would require a fee of \$200 for those permits. USDA defers to the Department of the Interior for activities occurring on DOI lands.

USDA has significant concerns with S. 1241 and cannot support this bill.

Upon enactment, the bill would supplant the authority of the Department of the Interior (DOI) and USDA to issue separate permits and charge separate permit fees for each commercial filming activity. In addition, the bill would supplant USDA's land use fee schedule for commercial filming involving a crew of 5 persons or fewer.

Although we are sympathetic to the needs of small businesses, we believe existing laws, regulations, and directives adequately address all commercial filming on federal lands. Even a five-person crew can have serious impacts on the land and interfere with normal visitor use.

Issuing permits tailored to each use and each location is one of the best tools we have for oversight of operators. Often film crews, even small crews, need large vehicles, trailers, generators, and other equipment to conduct their business. Each project needs to be evaluated separately to address potential impacts. In addition, each project should be assessed a land use fee based on

market value. We are also concerned that the bill could be interpreted to require authorization of commercial filming involving a crew of 5 persons or fewer in wilderness areas, regardless of requirements and considerations in the Wilderness Act.

Background

The Forest Service currently issues special use permits for commercial filming and still photography and collects land use fees for these activities.

The current authority for these permits is Public Law 106-206, which was signed into law on May 26, 2000, and is codified at 16 U.S.C. 4601-6d.

Prior to enactment of P. L. 106-206, the Forest Service had authority to issue special use permits and collect land use fees for these activities under the Organic Act of 1897, 16 U.S.C. 551.

Current Policy

In 2003, the Forest Service amended its directives to make them consistent with P. L. 106-206 and to implement the new authority to retain and spend land use fees for commercial filming and still photography. These directives contain a definition for “commercial filming” that establishes the types of filming activities for which a permit is required. The definition excludes

filming of breaking news because the need to cover breaking news arises suddenly, may evolve quickly, and may cease to be newsworthy by the time a permit is issued.

Land Use Fees

The Forest Service collects land use fees for commercial filming and still photography based on regional and forest fee schedules. In accordance with P. L. 106-206, the Forest Service collects, retains, and spends these fees without further appropriation. Ninety percent of the fee revenues are retained and spent at the local units where they are collected to improve customer service and program management for commercial filming and still photography.

Land use fees for commercial filming and still photography are established using either regional or forest fee schedules, as required by P.L. 106-206. The \$200 fee proposed by S. 1241 does not represent market value for the use of federal lands. While in certain low-impact scenarios this fee might represent the market rate, in many instances, \$200 will not reflect the value of the use of federal land for commercial filming. In addition, the lower the land use fee, the lower the amount available to DOI and USDA under the fee

retention provisions of P.L. 106-206 to improve customer service and program management for commercial filming.

Commercial Filming in Wilderness

The Forest Service currently issues permits for commercial filming in a wilderness area if the proposed use would contribute to the purposes for which the area was established. Section 4(d)(5) of the Wilderness Act, states that commercial services may be performed in wilderness areas only to the extent necessary for activities that are proper for realizing the recreational or other wilderness purposes of the areas. In cooperation with DOI, we plan to publish for public notice and comment definitions and criteria for commercial filming in wilderness areas based on the purposes of the Wilderness Act and the limitation on commercial services in Section 4(d)(5) of the Wilderness Act.

We are concerned that S. 1241 could pre-empt these efforts, as it could be interpreted to require authorization of commercial filming involving a crew of 5 persons or fewer in wilderness areas, regardless of other considerations and requirements in the Wilderness Act. Some of our most pristine lands would be open to commercial filming, regardless of these wilderness factors.

Conclusion

The proposed legislation has a significant potential to adversely affect federal lands, including wilderness areas. Current laws, regulations, and agency directives and the proposed interagency fee schedule and Forest Service directives on commercial filming in wilderness areas provide or would provide better resource protection and better management of commercial filming, as well as conform to existing statutory and regulatory requirements to obtain market value for the use of federal land. We would like to work with the Committee to address the concerns presented by S. 1241 and any concerns of the Committee with regard to accommodating small film crews under current law and policy.

Thank you, Mr. Chairman, and members of the Committee for the opportunity to comment on this bill today. We look forward to working with the Committee on this issue.