



United States Department of the Interior



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IN REPLY REFER TO:
2920
(UT921)P

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Instruction Memorandum No. UT 2007-016
Expires 9/30/2008

To: DSDs and AFOs
From: State Director
Subject: Filming Permit Policy

Program Area: Lands and Realty

Purpose: There have been changes related to the filming program as a result of several National and State level filming Instruction Memoranda (IM) and new cost recovery regulations. This IM supersedes IM No.UT 96-15 and IM No.UT 2000-059, Change 1, and incorporates current policies and procedures in order to maintain consistency in managing the commercial filming program on public lands in Utah.

Policy/Action: The Federal Land Policy and Management Act of 1976 (Public Law 94-579, as amended) augmented by Public Law 106-206, authorizes BLM to regulate commercial filming activities on Federal lands as follows:

A. Requirement for a BLM Filming Permit

Commercial filming, either still photography or motion filming, *will not be permitted* if it is determined that any of the following apply:

- there is likelihood of resource damage that can not be mitigated;
- there would be an unreasonable disruption of the public's use and enjoyment of the site; or
- the activity poses health or safety risks to the public.

Commercial filming, which is normally authorized by land use permits pursuant to the 43 CFR 2920 regulations, may also be authorized by Special Recreation Permit (SRP) pursuant to the 43 CFR 2930 regulations when the filming is conducted in conjunction with the SRP activity. Wildlife filming connected to a guiding operation is an example of this. Stipulations related to the filming activity should be incorporated into such SRPs, and the rent for the filming should be determined using the schedules in this Instruction Memorandum (IM). If the film is to be used only for marketing and promotional materials for the SRP holder or for mementos to be given to their guided customers, rent would not be required.

Still photography *requires a filming permit* when one or more of the following situations apply:

- use of models or props which are not part of a site's natural or cultural resources or administrative facilities are involved, for this definition, family or wedding portraits taken by professional photographers would be considered use of "models";
- if such photography takes place at locations where members of the public are generally not allowed; or
- if it occurs where additional administrative costs are likely.

Commercial still photography, i.e. photographs of scenery or wildlife, for magazine articles, advertisements, books, calendars, postcards, etc., *does not require a filming permit if none of the above criteria apply*. This includes photographs that may have products or models superimposed on them later. For this definition, reflectors, bounce cards, sound booms, or similar equipment are considered props.

Moving Photography (filming) *requires a filming permit* when documentaries, television programs, feature films; advertisements, wildlife filming, or similar projects result in a commercial product.

Wildlife Filming is commercial in nature if it results in a product (video or DVD footage) for sale or a commercial broadcast. Commercial wildlife filming is addressed in detail in IM UT-2005-060 since Utah experiences a large amount of this type of filming. Wildlife filming can often be related to commercial recreation activities authorized by an SRP, or it can occur independently. This type of filming typically takes place throughout the year, ranging from several days up to several years, usually involves only 2 or 3 people and does not impact the environment. A 43 CFR 2920 filming permit for wildlife filming should be restricted to no more than 5 people and 2 vehicles per crew per location, and should specify the month(s) and locations the filming would take place.

Commercial wildlife filming that is authorized in an SRP for guiding, must be restricted to the location and duration of the SRP, and the Alternative Commercial Filming Rent Schedule for the filming activity would apply if the resulting film will be sold.

Casual Use does not require a filming permit. Casual use is defined in 43 CFR 2920.0-5(k) as "...any short-term non-commercial activity (emphasis added) which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities." Casual use filming is typified by an individual or group of individuals taking pictures, either still or moving, for personal use. Examples of casual use would include the following: tourists taking pictures of scenery or wildlife during an outing on public lands; photographers taking pictures of scenery or wildlife for the purpose of adding the film to their stock libraries; hunters taking moving pictures of wildlife during a hunt; horseback riders taking pictures of scenery, guides, and traveling companions on a guided trail ride; etc. Creating wildlife or scenic footage strictly for a personal stock library would be considered a non-commercial activity and would not require a filming permit.

News Coverage does not require a filming permit. BLM policy (WO IM No. 2004-073) is that a film permit is not required when the filming activity involves reporting, by members of the media, for the purpose of broadcast on news programs. As long as news reporting does not adversely impact public lands, it is exempt from the requirement of a film permit. Field Offices should consult with their External Affairs staffs in dealing with media related issues and activities. However, the news media should be encouraged to contact the appropriate BLM field office prior to filming on public lands.

Student Filming projects do not require a filming permit as long as the activity would not adversely impact the public lands. Students need to submit a proposal in writing, with verification from the educational institution that it is a required project. The BLM may write a Letter of Acknowledgement to

recognize the project on public lands and identify resource protection measures designed to maintain the minimum impact nature of the project.

B. Minimum Impact Commercial Filming

The Interior Board of Land Appeals (IBLA) in case 151 IBLA 237, December 16, 1999, ruled, “An application for a minimum impact permit to conduct filming activities on Federal land pursuant to 43 U.S.C. § 1732 (1994) and 43 C.F.R. § 2920.2-2 (a) is properly granted where the proposed use is in conformance with BLM plans, policies and programs, local zoning ordinances and other requirements, and will not cause appreciable damage or disturbance to the public lands, their resources or improvements”. Consequently, you must consider the following factors when making minimum impact determinations:

- will the proposed action, with mitigation considered, impact sensitive habitat or species?
- will it impact historical, cultural, paleontological or Native American sacred sites?
- will it impact sensitive soils, air or water quality, wetlands or riparian areas and/or prime and unique farmlands?
- will it impact areas of critical environmental concern (ACECs), designated wilderness, wilderness study areas (WSAs), or wild and scenic rivers?

If there would be impacts, the applicant should be encouraged to consider ways to modify the proposal; perhaps a change of activity or an alternate location would be appropriate. **Attachment 1** is a checklist that should be used to help maintain consistency among BLM field offices in Utah in making minimum impact determinations.

The Grand Staircase-Escalante National Monument (GSENM) has issued non-expiring IM No.UT-030-01-002, Minimum Impact Filming Criteria, which establishes guidelines to be utilized for determining minimum impact filming on applications filed within the GSENM. Please contact GSENM headquarters at 435-644-4300 to obtain a copy of the IM.

Following preparation of appropriate NEPA documentation, decisions issuing minimum impact permits under 43 C.F.R. § 2920.2-2 (b) take effect immediately upon execution and remain in effect unless stayed. The project may proceed immediately upon receipt of a 2920 permit that has been executed by the BLM authorized officer. Proposals that do not meet the minimum impact criteria are subject to publication of a Notice of Realty Action as required by 43 C.F.R. § 2920.4, the application procedure in 43 C.F.R. § 2920.5, and the 30-day appeal period required by 43 C.F.R. § 4.411.

C. Typical Commercial Filming

This category of filming is most typically associated with still and motion pictures that are made with profit as the primary goal, and could involve larger numbers of people, vehicles, sets, props, livestock, corrals, tents, trailers, etc., which occupy public lands for some period of time. The following additional considerations and requirements are normally necessary when issuing a permit for this type of commercial filming:

1. Liability Insurance

A certificate of liability insurance for not less than \$1,000,000 must be provided to the BLM prior to issuance of a typical commercial filming permit. The United States Government must be named as an added insured party on the policy.

The only *exception* to this requirement is for commercial filming permits that meet all of the following criteria:

- minimum impact criteria for filming is met
- cast and crew do not exceed 5 people and 2 vehicles per location
- project does not involve stunts or similar high-risk activities
- project does not utilize specialized equipment besides hand-held cameras and tripods; and
- the proponent agrees in writing to the Liability Clause in 43 CFR §§ 2920.7 (**Attachment 2**) which must be signed and placed in the case file.

2. Bonding

Field offices are advised to require a performance bond in almost all cases when the land involved in a filming permit will need to be reclaimed or cleaned up after completion of the filming project. The amount of the bond must cover the full cost of reclamation and/or clean-up and be received by BLM prior to issuing the permit. Filming activities should be considered when determining the amount of performance bond to apply to an SRP-authorized event.

3. Compliance Monitoring

An option available to the permit holder is contracting the compliance monitoring in order to keep filming projects on schedule. This can be important when the realty specialist has conflicting priorities and the proponent is willing to pay for the contract. The Moab Field Office maintains a list of trained, BLM-approved filming monitors who are available for use by other field offices. Third party film monitors may be trained and approved by other BLM field office personnel to address their specific monitoring needs.

D. Consideration of Filming in Designated Wilderness and Wilderness Study Areas

Designated Wilderness: The Wilderness Act of September 3, 1964 allows for commercial use of wilderness only to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the Act. Any commercial filming would have to be consistent with that provision and with all other wilderness management guidelines provided in law, regulation and policy.

Wilderness Study Areas: Management guidelines for WSAs are described in BLM Manual Handbook H-8550-1 "Interim Management Policy (IMP) For Lands Under Wilderness Review." A non-impairment determination is required for each project. Uses such as no-impact commercial filming, and/or facilities that meet the non-impairment standard (defined in the paragraph below), may be permitted within WSAs. However, it is the BLM's policy as stated in Chapter I.B.16, to minimize establishment of new discretionary uses in WSAs that would be incompatible with possible wilderness designation, even when the uses would not in themselves exceed the non-impairment standard.

Management to the non-impairment standard means preventing actions that would preempt Congress' prerogative to decide whether or not to designate areas as part of the National Wilderness Preservation System. Management to the non-impairment standard does not mean that the lands would be managed as though they had already been designated as wilderness. Some uses that cannot take place in designated wilderness may be permitted under the IMP if they are temporary uses that do not create surface disturbance or if they involve no permanent placement of structures. Surface disturbance is any disruption of the soil or vegetation requiring reclamation within a WSA. Uses and facilities necessitating reclamation (i.e., re-contouring of the topography, replacement of topsoil, and/or restoration of native plant cover) are definitely surface disturbing and must be denied.

Because the **use of categorical exclusion reviews for permitting uses and facilities within WSAs is not allowed** (IMP Ch. II.B6.), a state-wide Programmatic EA (# UT-USO-06-004) for no-impact commercial filming in WSAs in Utah and GSENM has been prepared to use as appropriate. On a case-

by-case basis, this EA can be used for permitting no-impact commercial filming within WSAs. If used, a copy of EA #UT-USO-06-004 and a project-specific Decision Record must be placed in the associated filming permit case file. There is still a **mandatory 30-day public notification** period through the Electronic Notification Bulletin Board (ENBB) required for all uses proposed in WSAs, *even when this programmatic EA is used.*

E. Access for Filming

The use of an existing public road or route “as is” merely for the purpose of gaining access to a filming location is casual use and requires no special authorization. However, filming permits are required for commercial filming activities that take place *on* such roads, and in some instances, an encroachment permit from state or local government may be required for filming activities within their right-of-way. Any filming activities that are planned within the limits of a right-of-way must be closely coordinated with the right-of-way holder.

Filming activities that would result in making changes to an existing access route require authorization from the BLM. Typically such an authorization would be through issuance of a short term right-of-way grant and all activities must be closely coordinated with the right-of-way holder to ensure compatibility.

F. National Environmental Policy Act of 1969 (NEPA)

NEPA affects how Federal agencies conduct their planning and decision-making process (40 CFR § 1500.2). Each Field Manager will determine the appropriate level of environmental analysis and documentation needed through the NEPA process. Field offices are to utilize the guidance contained in the BLM Utah NEPA Guidebook, BLM’s NEPA Handbook (H-1790-1), Departmental Manual 516, and the CEQ regulations at 40 CFR §1500.

Environmental analysis will be completed on the “proposed action” if the proposal is in conformance with the existing land use plan. If the proposal is not in conformance with the land use plan, the proposal must be modified to conform to the plan, the land use plan must be amended, or the proposal must be denied. When a plan amendment is deemed appropriate, the applicant will bear the cost of the EA and/or EIS preparation. Any filming that would cause surface disturbance to public lands requires appropriate NEPA analysis, and a permit, if issued, would contain associated resource protection stipulations as determined through the NEPA process.

Appropriate levels of NEPA documentation for filming include, “Documentation of Land Use Plan Conformance and Determination of NEPA Adequacy (DNA)”, Categorical Exclusion (CX), Environmental Assessment (EA), and Environmental Impact Statement (EIS). CX is a category of actions which do not individually or cumulatively have a significant effect on the human environment. This list of exclusions is found in Departmental Manual 516, DM 2 Appendix 1, and 516 DM 2 11.5. The Departmental and BLM CXs also are listed in Appendix 1 of the BLM Utah NEPA Guidebook. For most minimum impact filming, environmental impacts are expected to be negligible and an authorization is necessary only because of the commercial nature of the activity. Typically, categorical exclusion 516 DM 11 5.4 E(19) or H(5) may be used to address NEPA requirements in most minimum or no-impact situations, however this is not the case for wilderness study areas (WSAs) – refer to Section D. above.

All NEPA documentation, except CXs for non-surface disturbing actions, must be posted on the Utah BLM Environmental Notification Bulletin Board (ENBB) for the appropriate amount of time. Whenever possible, prepare programmatic EAs for specific areas that receive repeated filming activity. Preparation of programmatic EAs is an effective method of meeting NEPA requirements for similar proposed actions by eliminating the need for redundant separate EAs. Use of programmatic EAs also increases efficiency by facilitating timely processing of permit applications in frequently used areas. The programmatic EA

for authorized uses on the Bonneville Salt Flats includes filming activities and is an excellent example.

G. Cost Recovery

BLM has the authority to recover application processing and monitoring costs for filming activities that require a permit. 43 C.F.R. § 2920.6 (b) provides that reimbursement of costs shall be in accordance with the provisions in 43 C.F.R. §§ 2804.14 and 2805.16. If the total rent is \$250 or more, the applicant is responsible for application processing and monitoring costs incurred by BLM. However, if the total rent for a permit is less than \$250, it is exempt from processing and monitoring fees. 43 C.F.R. § 2920.8(b) requires a \$25.00 permit renewal or assignment fee which may be waived by the authorized officer when a minimal amount of work (one hour or less) is involved. Wildlife filming permits are an example of filming permits that may be renewed. The cost recovery categories for application processing and permit monitoring are determined independently through separate decisions.

Cost recovery fees collected for processing and monitoring filming permits should be deposited in the 5440 account under your specific field office code. The funds are maintained at the field office budget level and should be used for film permitting and monitoring work by coding your time to 5440 EQ. Unspent balances carry over annually.

Discussion and review of proposals prior to acceptance of an application are not cost recoverable, however, field offices are encouraged to hold a pre-application meeting with the proponent. This provides the applicant an opportunity to learn whether their preferred location(s) is even feasible. If two or more pre-application meetings are needed, the realty specialist should request an application be filed and start collecting cost recovery fees. It is important to convey to applicants that changes in filming locations during the application process will mean a change in the permit processing time frame.

Frequently, an applicant will want to film in multiple offices. In these situations, one field office (lead office) may agree to process a minimum impact filming permit for the entire state or multiple offices, and coordinate NEPA compliance and signatory authority with the other field offices involved. The lead office would determine, collect and retain the cost recovery processing fees for use in processing the multiple-office permit.

H. Rent

Public Law 106-206 reinforces the authority that BLM has under FLPMA for collection of rental fees, and provides that collected rental fees are available for expenditure without further appropriation by Congress. 43 C.F.R. § 2920.0-6 provides that land use authorizations shall be issued only at fair market value and only for those uses that conform with Bureau plans, policy and objectives, and resource management programs. For cooperative filming endeavors determined to benefit Bureau programs or management of the public lands, mechanisms such as a Memorandum of Understanding or Cooperative Agreement pursuant to Section 307 of FLPMA may be considered rather than issuance of a 2920 filming permit.

Attachment 3 contains the rent schedules for commercial filming in Utah. The rates for Commercial Still Photography and Commercial Moving Photography were developed by appraisal to address intensive commercial filming over short periods of time, i.e. advertisements, motion pictures, documentaries, etc.

The Recreational Event Commercial Filming Schedule was developed by appraisal to address filming by third parties of SRP-authorized events. Issuance of this type of filming permit requires written concurrence from the event coordinator.

The Alternative Commercial Filming Schedule was developed administratively for use with certain types of minimal to no-impact commercial filming that generally take place over extended periods of time over large geographic areas, do not encumber public lands, are not intended to produce a large profit, and would otherwise be considered casual use, such as wildlife filming or filming by an educational institution. Field Office Managers have flexibility to accommodate unique situations using this filming rent schedule. **Attachment 4** is a checklist to ascertain when the use of this schedule may be appropriate. The Alternative Commercial Filming Schedule should be applied state-wide for a single permit holder regardless of the number of permits they hold. The rent would be based on the number of months for which it is issued. For example, rent collected for a 12-month permit would be \$3,000 whether it is issued for one office, several offices or state-wide, and the rent would be distributed equally among the affected offices.

WO IM No. 2005-149 directs that each field office shall deposit 90% of the rent collected for filming permits under Subactivity 5441, Project Code FILM, to the appropriate field office code, and 10% under Subactivity 5441, Project Code FILM, to state office code UT 920. The rent funds retained at the field office and State Office must be used to support and enhance the field office's ability to respond to commercial filming and still photography requests; such as doing programmatic environmental analyses, training, creating and maintaining on-line filming information sites and photo libraries, advance studies, clearances or plan amendments to support filming, or site reclamation where a bond is insufficient or the party is not known. These funds are **not** to be used for processing individual permits.

Timeframe: This IM is effective immediately.

Manual/Handbook Sections Affected: This IM augments policy guidance contained in BLM Manual 2920, Leases and Permits.

Coordination: This guidance was developed in consultation with UT934, UT935, Lands and Realty Division (WO350) and DOI Appraisal Services Directorate.

Contact: If you have any questions regarding this policy, please contact Rhonda Flynn, Lands and Minerals Division (UT921) at 801-539-4132 or via email at rhonda_flynn@ut.blm.gov.

Signed by:
Selma Sierra
State Director

Authenticated by:
Rosie Geren
Records Manager

Attachments –

- 1-Minimum Impact Filming Checklist
- 2-Liability Clause
- 3-Utah Filming Rent Schedules
- 4-Alternative Rent Checklist

Attachment 1

MINIMUM IMPACT FILMING CHECKLIST

Applicant: _____

Project: _____

Type of Filming: Movie _____ Still _____ Video/DVD _____

I. This section applies to all BLM-managed lands.	YES*	NO
A. Will impact sensitive habitat or species		
B. Will impact Native American sacred site		
C. Involves major use of pyrotechnics		
D. Involves more than minimum impacts to land, air, or water		
E. Involves use of explosives		
F. Involves use of exotic species with danger of introduction into the area		
G. Involves use of heavy equipment		
H. Involves aircraft (helicopter, fixed-wing, or hot air balloon) and was determined to not be minimally impacting in part II.		
I. Involves surface disturbance or adverse impact to sensitive surface resource values or does not meet standards mandated by law, regulation or policy for resources including, but not limited to:		
1. Historical, cultural or paleontological sites		
2. Sensitive soils		
3. Relict environments		
4. Wetlands or riparian areas		
5. Wild & Scenic River corridors		
6. National Register Sites		
7. Designated wilderness or WSAs		

* If "yes" was marked in any one category, the action is not minimally-impacting.

II. Aircraft Screening	YES*	NO
1. Use of aircraft (helicopter, fixed wing, hot air balloon) involves refueling in a sensitive area		
2. Use of aircraft is proposed in an area with wildlife concerns during a critical period and a) is proposed for more than 1 day or b) exceeds the frequency of 2 projects per 30-day period		
3. Use of aircraft is proposed in an area with no wildlife concerns and a) is proposed for more than 2 days or b) exceeds the frequency of 3 projects per 30-day period		
4. Use of aircraft is proposed within ½ mile of a designated campground located in a sensitive area and the number of low-elevation passes proposed exceeds 4 passes per day.		

* If "yes" was marked in any one category, the action is not minimally-impacting.

Attachment 2

LIABILITY CLAUSE**43 CFR 2920.7**

Holders of a land use authorization and all owners of any interest in, and all affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay the United States full value for injuries or damage to public lands or other property of the United States caused by the holder or by its employees, agents or servants, or by a contractor, its employees, agents or servants, except holders shall be held to standards of strict liability where the Secretary of the Interior determines that the activities taking place on the area covered by the land use authorization present a foreseeable hazard or risk of danger to public lands or other property of the United States. Strict liability shall not be applied where such damages or injuries result from acts of war or negligence of the United States.

Holders of a land use authorization and all owners of any interest in, and affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay third parties the full value of all injuries or damage to life, person or property caused by the holder, its employees, agents or servants or by a contractor, its employees, agents or servants.

Holders of a land use authorization shall indemnify or hold harmless the United States against any liability for damages to life, person or property arising from the authorized occupancy or use of the public lands under the land use authorization. (When a land use authorization is issued to a State or local government or any agency or instrumentality thereof, which has no legal power to assume such liability with respect to damages caused by it to lands or property, such State or local government or agency in lieu thereof shall be required to repair all damages.)

I have read and understand the liability regulation cited above.

Signature

Date

Attachment 3

UTAH FILMING RENT SCHEDULES**Commercial Still Photography**

1 to 10 People.....	\$100/location/day
11 to 30 People.....	\$150/location/day
Over 30 People.....	\$250/location/day

Commercial Moving Photography

1 to 30 People.....	\$250/location/day
31 to 60 People.....	\$500/location/day
Over 60 people.....	\$600/location/day

Recreational Event Commercial Filming**(per 3rd party per event)**

(Requires written concurrence of event coordinator)

Still Photography: \$100.00 or 3% of gross receipts, whichever is greater
 Moving Photography: \$250.00 or 3% of gross receipts, whichever is greater

Alternative Commercial Filming

(For minimalist commercial filming and SRPs which include filming)

1 month (or any fraction thereof; specify which month(s)....	\$250
2 months	\$500
3 months	\$750
4 months	\$1000
5 months	\$1250
6 months	\$1500
7 months	\$1750
8 months	\$2000
9 months	\$2250
10 months	\$2500
11 months	\$2750
12 months	\$3000

Attachment 4

Alternative Filming Rent Schedule Checklist

Applicant: _____

Project: _____

Type of Filming: Movie _____ Still _____ Video/DVD _____

Part I

	YES	NO
Advertisement?		
Music Video?		
Documentary for Television or Movie Theaters?		
Professional Actors, Models, Musicians, or Products Used?		
Involves physical occupation or construction of "facilities"? (structures, sets, props, corrals, tents, trailers, more than 5 vehicles, camera dollies, cranes, aircraft landing or flying or hovering at low altitudes, pyrotechnics, etc.)		
Involves intensive use of specific sites/areas?		

If the answer is YES to *any* of the above, use the regular schedule. **If the answer is NO to *all* of the above, proceed to Part II.**

Part II

	YES	NO
Would be considered casual use if not making a commercial product? (driving, camping, hiking, climbing, riding, boating, etc., in approved areas)		
Has no impact <i>or</i> meets "minimum impact" criteria? (NEPA CX)		
Subject is "natural"? (wildlife/nature/scenery/recreational activities)		
Long term/frequent and/or repetitive?		
Covers large or many geographic areas?		
Involves short periods of sporadic filming.		
Educational Institution Production?		
Beneficial to BLM programs?		

If the answer is YES to *most or all* of the above, consider using the alternative schedule.