



December 3, 2014

Mary Wagner
Associate Chief, U.S. Forest Service
Commercial Filming in Wilderness, USDA, Forest Service,
Attn: Wilderness & Wild and Scenic Rivers (WWSR)
201 14th Street SW, Mailstop Code: 1124,
Washington, DC 20250-1124.

Re: 79 FR 52626, "Proposed Directive for Commercial Filming in Wilderness;
Special Uses Administration"

Dear Ms. Wagner:

Thank you for the opportunity to comment on the Proposed Directive for Commercial Filming in Wilderness. Outdoor Industry Association (OIA) is the leading trade association serving more than 1,200 suppliers, manufacturers, retailers, and many other outdoor industry professionals, including professional athletes, outdoor photographers, filmmakers, and industry media. OIA's mission is to support the growth and success of the outdoor industry through its focus on government affairs, corporate responsibility, consumer research, industry trends and youth participation.

The outdoor industry cares deeply about, and depends on, America's public lands and waters as the infrastructure for the \$646 billion outdoor recreation contributes every year to the U.S. economy and the more than 6 million Americans employed in our industry. We also support the land managers whose livelihoods are focused on the protection of our nation's natural resources. In fact, more than 140 million Americans participate in some form of outdoor recreation, often on public lands and waters. From individuals to groups of friends and families, including outdoor athletes who endorse a specific outdoor brand or those who simply seek the outdoors for health, wellness and an appreciation of the natural world, more and more people want to capture and share their experiences in wilderness through video and photography.

These videos and photographs not only tell the stories of the enthusiasts who capture them, but also of the United States Forest Service (USFS) and the work it does on behalf of the American people. The epic adventures and pristine wild places that are recorded provide the best promotion of America's great outdoors, and are critical for our industry and the land management agencies. However, the proposed directive, as written, is likely to have substantially negative impacts on OIA's members, the outdoor industry, and the millions of Americans and foreign tourists who recreate on USFS lands each year.



Some of our comments may go beyond the scope of the proposed directive, but they provide context and are integral to the commercial filming discussion. We hope to work with you to clarify some of the language in this directive to diminish unintended consequences on the outdoor industry and the outdoor recreation economy. We would like to see practical approaches with practical applications, and while it is difficult to discuss this directive in generalities, we have the following recommendations:

1. Advertisement of a Product or Service

OIA recognizes that adventure films often feature sponsored athletes who wear branded apparel and use branded equipment. We do not believe the use of branded equipment or apparel in a film production should be treated as prohibited advertisement of a product or service within the meaning of section 45.1c(5)(g). The brand sponsors of these athletes who use their equipment or apparel in an adventure film may wish to use excerpts from that film in an advertisement for their product. So long as all the other filming in wilderness criteria is followed, we do not believe the potential for subsequent and incidental advertising should adversely impact the eligibility for a permit.

On October 31, 2014, OIA and other interested stakeholders had a positive listening session with USFS representatives who assured us this type of activity would not be a problem and that an incidental appearance of a product logo should not constitute advertisement. We would go further to say that advertisements for products and/or services related to the wilderness (like outfitter and guide services and outdoor gear and apparel brands) should be allowed if they meet all other criteria. Advertisements for brands tied to wilderness values have the end goal of getting people to experience the wilderness, which is very much in line with the agency's mission.

For these reasons, **we recommend the agency revise section 45.1c(5)(g) to read:**

“Would not advertise any product or service other than the use or enjoyment of wilderness. For purposes of this section, the following will not be considered advertisement of a product or service:

- (i) The incidental appearance of branded equipment or apparel in a film, video or photograph; and
- (ii) The incidental use, for advertising purposes, of excerpts from film, video or photographs captured during filming or photographic activities that otherwise satisfy the wilderness filming criteria.”

2. Outdated language for commercial filming

Technology in filming has advanced significantly since 2000, when Public Law 106-206 was passed. Although the proposed directive does not define “commercial filming,” we hope this definition, and the special use authorization language for filming in wilderness, will be revisited given technological advancements and the burgeoning outdoor



recreation economy. With small cameras, phones and new technologies to come, fewer people, less equipment and a smaller footprint are required to film in wilderness, and thus cause less of an impact to the land. In fact, there may be no difference in impact from someone taking a video for commercial use and one who is carrying a camera phone in their pocket. Chief Tidwell recognized this in his November 4th memorandum stating, “Commercial film and photography permit fees should be primarily viewed as land-use fees. If the activity presents no more impact on the land than that of the general public, than it shall be exempt from permit requirements.” **We recommend the USFS update their commercial filming language to better reflect Chief Tidwell’s comments and the low impact technology used for filming and photography has on the land.**

3. Impacts on wilderness recreation, education and relevancy due to commercial filming limitations

Recreation is a purpose of wilderness according to the Wilderness Act, but is not mentioned as a justification for filming in this directive. **We recommend adding ‘recreation’ to section 451c.5a to read:** “...Has a primary objective of dissemination of information about the use and enjoyment of wilderness or its ecological, geological, or other features of scientific, educational, scenic, **recreation**, or historical value.”

Producers of adventure films often want to shoot in wilderness in order to capture skiing, climbing, mountaineering or paddling in a spectacular landscape. In these circumstances, wilderness-based recreation is the primary focus of the filming activity. The wilderness setting itself can be seen as a central component of the film's subject matter. We believe it is appropriate to issue permits for wilderness filming in these circumstances so long as wilderness character is preserved and the other wilderness permit criteria are satisfied.

We hope that the final directive does not unnecessarily restrict video in a way that prevents more people from viewing and learning about these amazing places. The proposed directive as written could limit filming and photography in wilderness to the point that it becomes inaccessible for modern use by the American public, and harder to garner support from the next generation of stewards.

4. Intent of video use

Every year thousands of people are introduced to the outdoors through guided trips. Pictures and videos from these trips end up on Facebook, YouTube, or the website of the outfitter, guide, nonprofit or educational institution running the trip. While the video or picture may not have been intended for commercial purposes, in an era of constant data and information exchange, it is hard to know where the picture/video may end up, and even Facebook, Twitter and Instagram now play a role in advertising through social media. As we discussed with USFS representatives on a call in early November, intent



should be the deciding factor as to whether or not a video is considered to be taken for commercial purposes. If the intent of the footage is for personal use, it does not require a permit, regardless of where it ends up so using “profit” as a trigger here is problematic. Although this proposed directive is not looking at whether or not a permit is required, this issue should be addressed simultaneously because there are many situations where incidental advertisement for a product or service could occur. **We hope this issue is clarified in the directive so the rule reflects the USFS’ intent and is not left up to the forest manager for interpretation.**

Once this directive is finalized and made public, we hope there will be an effort to ensure those applying for permits are responded to in a timely manner and given advice on how to alter their permit application if a permit is not given out.

Lastly, we appreciate the United States Forest Service’s (USFS) stakeholder engagement on this issue over the past few months, and the extended comment period. We also appreciate the Chief’s letter on this issue and our phone conversation with USFS leadership, but understand the reality that a rule cannot be amended by a letter or phone call. We hope that the true motivations and recommended changes to the directive expressed by USFS staff over the past few months will be amended in the rule so the language is consistent with the intent for this ruling.

Thank you for your attention to our comments. We hold pristine wilderness as a shared value and want to work with you to keep in tact wilderness characteristics, while making sure this directive does not have unintended consequences on outdoor recreation companies or users. In order to introduce new and diverse audiences to our wilderness areas, some who may never make it there, we will continue to rely on photography and video and hope you will consider greater stakeholder engagement from the outdoor industry as you finalize this directive.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Barker". The signature is fluid and cursive, with the first name "Steve" and last name "Barker" clearly distinguishable.

Steve Barker
Executive Director
Outdoor Industry Association