

## Bureau of Land Management, Interior

## § 2808.2-1

with the provisions of subpart 2802 of this title to the extent that the requirements of subpart 2802 of this title are appropriate for Federal agencies.

### § 2807.1-1 Document preparation.

(a) The right-of-way reservation need not conform to the agency's proposal, but may contain such modifications, terms, conditions or stipulations, including changes in route or site location, as the authorized officer determines appropriate.

(b) All provisions of the regulations contained in this part shall, to the extent possible, apply and be incorporated into the reservation to the Federal agency.

### § 2807.1-2 Reservation termination and suspension.

The authorized officer may suspend or terminate the reservation only in accordance with the terms and conditions of the reservation, or with the consent of the head of the department or agency holding the reservation.

## Subpart 2808—Reimbursement of Costs

SOURCE: 52 FR 25808, July 8, 1987, unless otherwise noted.

### § 2808.1 General.

(a) An applicant for a right-of-way grant or temporary use permit under this part shall reimburse the United States in advance for the expected reasonable administrative and other costs incurred by the United States in processing the application, including the preparation of any reports or statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), prior to the United States having incurred such costs.

(b) The regulations in this subpart do not apply to the following:

- (1) Federal agencies;
- (2) State and local governments or agencies or instrumentalities thereof when a right-of-way grant or temporary use permit is granted for governmental purposes benefiting the general public. However, if the principal source of revenue results from charges being levied on customers for services similar to those rendered by a profit-

making corporation or business, they shall not be exempt; or

(3) Cost share roads or reciprocal right-of-way agreements.

[52 FR 25808, July 8, 1987; 52 FR 34456, Sept. 11, 1987]

### § 2808.2 Cost recovery categories.

#### § 2808.2-1 Application categories.

(a) The following categories shall be used to establish the appropriate non-refundable fee for each application pursuant to the fee schedule in § 2808.3-1 of this title:

(1) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and no field examination is required.

(2) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and 1 field examination to verify existing data is required.

(3) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and 2 field examinations to verify existing data are required.

(4) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which some original data are required to be gathered to comply with the National Environmental Policy Act and other statutes; and 2 or 3 field examinations are required.

(5) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the gathering of original data are required to comply with

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the National Environmental Policy Act and other statutes; and 3 or more field examinations are required.

**§ 2808.2-2 Category determination.**

(a) The authorized officer shall determine the appropriate category and collect the required application processing fee pursuant to §§ 2808.3-1 and 2808.5 of this title before processing an application. A record of the authorized officer's category determination shall be made and given to the applicant. This determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

(b) During the processing of an application, the authorized officer may change a category determination to place an application in Category V at any time it is determined that the application requires the preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made and furnished to the applicant. The revised determination is appealable in the same manner as an original category determination under paragraph (a) of this section. No other changes of category determination shall be permitted.

**§ 2808.3 Fees and payments.**

**§ 2808.3-1 Application fees.**

(a) The fee by category for processing an application for a right-of-way or temporary use permit is:

Category	Fee
I .....	\$125
II .....	300
III .....	550
IV .....	925
V .....	<sup>1</sup>

<sup>1</sup> As required.

(b) Where the amount submitted by the applicant under paragraph (a) of this section exceeds the amount of the required fee determined by the authorized officer, the excess shall be refunded. If requested in writing by the applicant, the authorized officer may apply all or part of any such refund to the grant monitoring fee required

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under § 2808.4 of this title or to the rental payment required by § 2803.1-2 of this title.

(c) Upon a determination that an application falls under Category V:

- (1) The authorized officer shall:
  - (i) Complete a preliminary scoping of the issues involved;
  - (ii) Prepare a preliminary work plan;
  - (iii) Develop a preliminary financial plan, estimating the actual costs to be incurred by the United States in the processing of the application; and
  - (iv) Discuss funding availability, options for cost reimbursement (i.e., a determination of actual costs under section 304(b) of the Act, paying all actual costs, or selecting the 1 percent ceiling), and information to be submitted by the applicant, including construction costs and other financial information.

(2) An applicant/holder may submit a written analysis of the estimated actual cost showing specific monetary value considerations, public benefits, public services, or other data or information which would support a finding that an application for a right-of-way grant or temporary use permit qualified for a reduction or waiver of cost reimbursement under section 303(b) of the Act or § 2808.5 of this title. If the applicant elects a cost analysis under this paragraph, the provisions of paragraph (f) of this section shall not apply.

(d) The authorized officer shall discuss the preliminary plans and data and verify the information that may be submitted under paragraph (c) of this section by the applicant. The applicant is encouraged to do all or part of any special study or analysis required in connection with the processing of the application to standards established by the authorized officer.

(e) After coordination with the applicant as required by paragraph (d) of this section, the authorized officer shall develop final scoping, work and financial plans which reflect any work the applicant agrees to do and complete a final estimate of the amount of the actual costs to be reimbursed by the applicant, giving consideration to the factors set forth in section 304(b) of the Act.

(f) An applicant may elect to waive consideration of reasonable costs under

paragraph (e) of this section and either: (1) Agree to pay all actual costs incurred by the United States in processing the application and monitoring the grant or temporary use permit; or (2) pay the actual costs of processing the application and monitoring the right-of-way grant up to the amount estimated by the authorized officer to equal 1 percent of the applicant's planned costs of construction of the project on the public lands for which a right-of-way grant is sought. Under this alternative, the applicant shall not be responsible for actual costs exceeding 1 percent of the estimated cost of constructing the proposed facilities on public lands. The request for a waiver shall be in writing and filed with the authorized officer.

(g) The applicant shall reimburse the United States for the applicant's share of costs, as determined under paragraphs (e) and (f) of this section, before the grant or permit shall issue.

(h) Where a State Director grants a reduction or waiver of cost reimbursement under the provisions of paragraph (e) of this section and/or §2808.5 of this title or where the reimbursable costs of processing an application are determined to exceed 1 percent of the cost of construction of the facilities under paragraph (f) of this section, the necessary funding shall be available either through the Bureau's appropriation process or otherwise made available for the processing of the application or such processing shall not proceed.

(i) The authorized officer shall provide the applicant with a written determination of the reasonable costs to be reimbursed by the applicant or holder and those that will be funded by the United States under paragraphs (e) and (f) of this section and §2808.5 of this title. This determination is a final decision for purposes of appeal under §2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with §2808.6 of this title.

#### § 2808.3-2 Periodic advance payments.

(a) The authorized officer may periodically estimate the reasonable costs expected to be incurred by the United States for specific work periods in processing an application determined

to be in Category V or monitoring the right-of-way grant or temporary use permit under the provisions of §2808.3-1 (e) through (f) of this title and shall notify the applicant of the estimated amount to be reimbursed for the period and the applicant shall make payment of such estimated reimbursable costs prior to the incurring of such costs by the United States.

(b) If the payments required by paragraph (a) of this section exceed the actual costs incurred by the United States, the authorized officer shall adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant shall not set off or otherwise deduct any debt due it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(c) The authorized officer may re-estimate the actual costs determined under §2808.3-1 (e) through (g) of this title at any time it is determined that a change warranting a re-estimate occurs. An appeal of a re-estimate shall be treated in the same manner as an original estimate made under §2808.3-1(e) of this title.

(d) Before issuance of a right-of-way grant or temporary use permit, an applicant shall pay such additional amounts as are necessary to reimburse the United States in full for any costs incurred, but not yet paid under §2808.3-1(h) of this title.

#### § 2808.3-3 Costs incurred for a withdrawn or denied application.

(a) An applicant whose application is denied is liable for any costs incurred by the United States in processing the application. Those amounts that have not been paid are due within 30 days of the receipt of a bill from the authorized officer identifying the amount due.

(b) An applicant who withdraws an application before a grant or temporary use permit is issued is liable for all costs incurred by the United States in processing the application up to the date the authorized officer receives the written notice of withdrawal, and for

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costs subsequently incurred in terminating the processing of said application. Those amounts that have not been paid are due within 30 days of receipt of a bill from the authorized officer identifying the amount due.

way grant or temporary use permit shall be used for monitoring. The one-time fee for monitoring a right-of-way grant or temporary use permit determined to be in Categories I through IV is as follows:

**§ 2808.3-4 Joint liability for payments.**

Category	Fee
I .....	\$50
II .....	75
III .....	100
IV .....	200

(a) When 2 or more applications for a right-of-way grant are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by §2808.3 of this title, subject however, to the provisions of §2808.1(b) of this title. Each applicant shall be responsible for the reimbursement of the reasonable costs identified with his/her application. Costs that are not readily identifiable with either of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications, generally, shall be paid by each applicant in equal shares or such other proportion as may be agreed to in writing by the applicants and the authorized officer prior to the United States incurring such costs.

(2) The monitoring fee for a right-of-way grant or temporary use permit determined to be in Category V shall be included with the costs determined under §§2808.3-1 through 2808.3-4 of this title.

(b) When, through partnership, joint venture or other business arrangements, more than 1 person, partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly and severally liable for costs under §2808.3 of this title for the entire system, subject however, to the provision of §2808.1(b) of this title.

(b) The holder shall submit the payment for the cost of monitoring required by paragraph (a)(1) of this section or the first periodic advance payment required under §2808.3-2 of this title, as appropriate, along with the written acceptance of the terms and conditions of the grant or permit. No right-of-way grant or temporary use permit shall be issued until the required payment is made.

[52 FR 25808, July 8, 1987; 52 FR 36576, Sept. 30, 1987]

**§ 2808.4 Reimbursement of costs for monitoring.**

**§ 2808.5 Other cost considerations.**

(a) A holder of a right-of-way grant or temporary use permit for which a fee was assessed under §2808.3 of this title shall, prior to the United States incurring such costs, reimburse the United States for costs to be incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way grant or temporary use permit area, and for protection and rehabilitation of the lands involved, under the following schedule:

(a) The State Director, after consultation with an applicant or holder making a request for a reduction or waiver of reimbursable costs under §2808.3-1 of this title, may reduce or waive reimbursement required under §§2808.3-1 through 2808.3-4 of this title. In reaching a decision, the State Director may require the applicant/holder to submit in writing any information or data in addition to that required by §2808.3-1(c) of this title that he/she determines to be needed to support a proposed finding that an application, grant or temporary use permit qualifies for a reduction or waiver of cost reimbursement. Action on a Category V application shall be suspended pending the State Director's decision.

(1) The same category as determined under §2808.2-2 of this title for processing of an application for a right-of-

(b) The State Director may base the decision to reduce or waive reimbursable costs on any of the following factors:

(1) The applicant's/holder's financial condition is such that payment of the

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fee would result in undue financial hardship;

(2) The application processing or grant monitoring costs are determined to be grossly excessive in relation to the costs of constructing the facilities or project requiring the right-of-way grant or temporary use permit on the public lands;

(3) A major portion of the application processing or grant monitoring costs are the result of issues not related to the actual right-of-way grant or temporary use permit;

(4) The applicant/holder is a non-profit organization, corporation or association which is not controlled by or a subsidiary of a profitmaking enterprise;

(5) The studies undertaken in connection with the processing of the application have a public benefit;

(6) The facility or project requiring the right-of-way grant will provide a special service to the public or to a program of the Secretary;

(7) A right-of-way grant is needed to construct a facility to prevent or mitigate damages to any lands or improvements or mitigate hazards or danger to public health and safety resulting from an Act of God, an act of war or negligence of the United States;

(8) The holder of a valid existing right-of-way grant is required to secure a new right-of-way grant in order to relocate facilities which are required to be moved because the lands are needed for a Federal or federally funded project, if such relocation is not funded by the United States;

(9) Relocation of a facility on a valid existing right-of-way grant requires a new or amended right-of-way grant in order to comply with the law, regulations or standards of public health and safety and environmental protection which were not in effect at the time the original right-of-way grant or temporary use permit was issued; or

(10) It is demonstrated that because of compelling public benefits or public services provided, or for other causes, collection of reimbursable costs by the United States for processing an application, for a grant or permit would be

inconsistent with prudent and appropriate management of the public lands and the equitable interest of the applicant/holder or of the United States.

(c) The State Director may consider a reduction or waiver of fees under this section in determining reimbursable costs made under §2808.3 of this title. Said determination is a final decision for purposes of appeal under §2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with §2808.6 of this title.

(d) Notwithstanding a finding by the State Director that there is a basis for reduction of the costs required to be reimbursed under this subpart, the State Director may not reduce such costs if funds to process the application(s) or to monitor the grant(s) or permit(s) are not otherwise available or may delay such decision pending the availability of funds.

[52 FR 25808, July 8, 1987; 52 FR 34456, Sept. 11, 1987]

### § 2808.6 Action pending decision on appeal.

(a) Where an appeal is filed on an application determined under §2808.2-2(a) of this title to be in Categories I through IV, an application shall not be accepted for processing without payment of the fee for such application according to the category determined by the authorized officer; however, when payment is made, the application may be processed and, if proper, the grant or temporary use permit issued. The authorized officer shall make any refund or other adjustment directed as a result of an appeal.

(b) Where an appeal is filed for an application determined under §2808.2-2(a) of this title to be in Category V or for a related cost reimbursement determination under §2808.3-1 (e) through (g) or §2808.5(c) of this title, processing of the application shall be suspended pending the outcome of the appeal.

[52 FR 25808, July 8, 1987; 52 FR 36576, Sept. 30, 1987]