

Bureau of Land Management, Interior

§ 2804.21

you must do the work following BLM standards. For this purpose, you and BLM may enter into a written agreement. BLM will make the final determinations and conclusions arising from such work.

(d) BLM will periodically, as stated in the agreement, estimate processing costs for a specific work period and notify you of the amount due. You must pay the amount due before BLM will continue working on your application. If your payment exceeds the reasonable costs that BLM incurred for the work, BLM will either adjust the next billing to reflect the excess, or refund you the excess under 43 U.S.C. 1734. You may not deduct any amount from a payment without BLM's prior written approval.

§ 2804.20 How does BLM determine reasonable costs for Processing Category 6 or Monitoring Category 6 applications?

BLM will consider the factors in paragraph (a) of this section and § 2804.21 of this subpart to determine reasonable costs. Submit to the BLM field office having jurisdiction over the lands covered by your application a written analysis of those factors applicable to your project, unless you agree in writing to waive consideration of reasonable costs and elect to pay full actual costs (*see* § 2804.14(f) of this subpart). Submitting your analysis with the application will expedite its handling. BLM may require you to submit additional information in support of your position. While we consider your written analysis, BLM will not process your Category 6 application.

(a) *FLPMA factors.* If your application is for a Processing Category 6, or a Monitoring Category 6 project, the BLM State Director having jurisdiction over the lands you are applying to use will apply the following factors set forth at section 304(b) of FLPMA, 43 U.S.C. 1734(b), to determine the amount you owe. With your application, submit your analysis of how each of the following factors applies to your application:

(1) Actual costs to BLM (exclusive of management overhead costs) of processing your application and of monitoring construction, operation, maintenance,

and termination of a facility authorized by the right-of-way grant;

(2) Monetary value of the rights or privileges you seek;

(3) BLM's ability to process an application with maximum efficiency and minimum expense, waste, and effort;

(4) Costs incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant. That is, the costs for studies and data collection that have value to the Federal Government or the general public apart from processing the application;

(5) Any tangible improvements, such as roads, trails, and recreation facilities, which provide significant public service and are expected in connection with constructing and operating the project; and

(6) Other factors relevant to the reasonableness of the costs (*see* § 2804.21 of this subpart).

(b) *Fee determination.* After considering your analysis and other information, BLM will notify you in writing of what you owe. If you disagree with BLM's determination, you may appeal it under § 2801.10 of this part.

§ 2804.21 What other factors will BLM consider in determining processing and monitoring fees?

(a) *Other factors.* If you include this information in your application, in arriving at your processing or monitoring fee in any category, the BLM State Director will consider whether:

(1) Payment of actual costs would:

(i) Result in undue financial hardship to your small business, and you would receive little monetary value from your grant as compared to the costs of processing and monitoring; or

(ii) Create such undue financial hardship as to prevent your use and enjoyment of your right-of-way for a non-commercial purpose.

(2) The costs of processing the application and monitoring the issued grant grossly exceed the costs of constructing the project;

(3) You are a non-profit organization, corporation, or association which is not controlled by or a subsidiary of a profit-making enterprise; and

(i) The studies undertaken in connection with processing the application or

§ 2804.22

monitoring the grant have a public benefit; or

(ii) The facility or project will provide a benefit or special service to the general public or to a program of the Secretary;

(4) You need a grant to prevent or mitigate damages to any lands or property or to 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;

(5) You have a grant and need to secure a new or amended grant in order to relocate an authorized facility to comply with public health and safety and environmental protection laws, regulations, and standards which were not in effect at the time BLM issued your original grant;

(6) You have a grant and need to secure a new grant to relocate facilities which you have to move because a Federal agency or federally-funded project needs the lands and the United States does not pay the costs associated with your relocation; or

(7) For whatever other reason, such as public benefits or public services provided, collecting processing and monitoring fees would be inconsistent with prudent and appropriate management of public lands and with your equitable interests or the equitable interests of the United States.

(b) *Fee determination.* With your written application, submit your analysis of how each of the factors, as applicable, in paragraph (a) of this section pertain to your application. BLM will notify you in writing of the BLM State Director's fee determination. You may appeal this decision under §2801.10 of this part.

§ 2804.22 How will the availability of funds affect the timing of BLM's processing?

If BLM has insufficient funds to process your application, we will not process it until funds become available or you elect to pay full actual costs under §2804.14(f) of this part.

§ 2804.23 What if there are two or more competing applications for the same facility or system?

(a) If there are two or more competing applications for the same facil-

43 CFR Ch. II (10–1–11 Edition)

ity or system and your application is in:

(1) *Processing Category 1 through 4.* You must reimburse BLM for processing costs as if the other application or applications had not been filed.

(2) *Processing Category 6.* You are responsible for processing costs identified in your application. If BLM cannot readily separate costs, such as costs associated with preparing environmental analyses, you and any competing applicants must pay an equal share or a proportion agreed to in writing among all applicants and BLM. If you agree to share costs that are common to your application and that of a competing applicant, and the competitor does not pay the agreed upon amount, you are liable for the entire amount due. The applicants must pay the entire processing fee in advance. BLM will not process your application until we receive the advance payments.

(b) *Who determines whether competition exists?* BLM determines whether the applications are compatible in a single right-of-way system or are competing applications for the same system.

(c) If BLM determines that competition exists, BLM will describe the procedures for a competitive bid through a bid announcement in a newspaper of general circulation in the area affected by the potential right-of-way and by a notice in the FEDERAL REGISTER.

§ 2804.24 Do I always have to submit an application for a grant using Standard Form 299?

You do not have to file an application using Standard Form 299 if:

(a) BLM determines that competition exists (*see* §2804.23(c) of this subpart); or

(b) You are an oil and gas operator. You may include your right-of-way requirements for a FLPMA grant as part of your Application for Permit to Drill or Sundry Notice under the regulations in parts 3160 through 3190 of this chapter.

§ 2804.25 How will BLM process my application?

(a) BLM will notify you in writing when it receives your application and will identify your processing fee described at §2804.14 of this subpart.