

## § 2804.21

## 43 CFR Ch. II (10–1–13 Edition)

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 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 facility 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