

§ 2804.15

(e) In processing your application, BLM may determine at any time that the application requires preparing an EIS. If this occurs, BLM will send you a decision changing your processing category to Processing Category 6. You may appeal this decision under § 2801.10 of this part.

(f) To expedite processing of your application, you may notify BLM in writing that you are waiving paying reasonable costs and are electing to pay the full actual costs incurred by BLM in processing your application and monitoring your grant.

§ 2804.15 When does BLM reevaluate the processing and monitoring fees?

BLM reevaluates the processing and monitoring fees (*see* § 2805.16 of this part) for each category and the categories themselves within 5 years after they go into effect and at 10-year intervals after that. When reevaluating processing and monitoring fees, BLM considers all factors that affect the fees, including, but not limited to, any changes in:

- (a) Technology;
- (b) The procedures for processing applications and monitoring grants;
- (c) Statutes and regulations relating to the right-of-way program; or
- (d) The IPD-GDP.

§ 2804.16 Who is exempt from paying processing and monitoring fees?

You are exempt from paying processing and monitoring fees if:

- (a) You are a state or local government, or an agency of such a government, and BLM issues the grant for governmental purposes benefitting the general public. If your principal source of revenue results from charges you levy on customers for services similar to those of a profit-making corporation or business, you are not exempt; or
- (b) Your application under this subpart is associated with a cost-share road or reciprocal right-of-way agreement.

§ 2804.17 What is a Master Agreement (Processing Category 5) and what information must I provide to BLM when I request one?

- (a) A Master Agreement (Processing Category 5) is a written agreement cov-

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ering processing and monitoring fees (*see* § 2805.16 of this part) negotiated between BLM and you that involves multiple BLM grant approvals for projects within a defined geographic area.

(b) Your request for a Master Agreement must:

(1) Describe the geographic area covered by the Agreement and the scope of the activity you plan;

(2) Include a preliminary work plan. This plan must state what work you must do and what work BLM must do to process your application. Both parties must periodically update the work plan, as specified in the Agreement, and mutually agree to the changes;

(3) Contain a preliminary cost estimate and a timetable for processing the application and completing the projects;

(4) State whether you want the Agreement to apply to future applications in the same geographic area that are not part of the same projects; and

(5) Contain any other relevant information that BLM needs to process the application.

§ 2804.18 What provisions do Master Agreements contain and what are their limitations?

(a) A Master Agreement:

(1) Specifies that you must comply with all applicable laws and regulations;

(2) Describes the work you will do and the work BLM will do to process the application;

(3) Describes the method of periodic billing, payment, and auditing;

(4) Describes the processes, studies, or evaluations you will pay for;

(5) Explains how BLM will monitor the grant and how BLM will recover monitoring costs;

(6) Contains provisions allowing for periodic review and updating, if required;

(7) Contains specific conditions for terminating the Agreement; and

(8) Contains any other provisions BLM considers necessary.

(b) BLM will not enter into any Agreement that is not in the public interest.

(c) If you sign a Master Agreement, you waive your right to request a reduction of processing and monitoring fees.

§ 2804.19 How will BLM process my Processing Category 6 application?

(a) For Processing Category 6 applications, you and BLM must enter into a written agreement that describes how BLM will process your application. The final agreement consists of a work plan and a financial plan.

(b) In processing your application, BLM will:

(1) Determine the issues subject to analysis under NEPA;

(2) Prepare a preliminary work plan;

(3) Develop a preliminary financial plan, which estimates the reasonable costs of processing your application and monitoring your project;

(4) Discuss with you:

(i) The preliminary plans and data;

(ii) The availability of funds and personnel;

(iii) Your options for the timing of processing and monitoring fee payments; and

(iv) Financial information you must submit; and

(5) Complete final scoping and develop final work and financial plans which reflect any work you have agreed to do. BLM will also present you with the final estimate of the reasonable costs you must reimburse BLM, including the cost for monitoring the project, using the factors in §§ 2804.20 and 2804.21 of this subpart.

(c) BLM retains the option to prepare any environmental documents related to your application. If BLM allows you to prepare any environmental documents and conduct any studies that BLM needs to process your application, 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