

§ 2808.6

43 CFR Ch. II (10–1–03 Edition)

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 appli-

cation, 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]