

**§ 2808.3-2**

**43 CFR Ch. II (10-1-04 Edition)**

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.

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

(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.

(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.

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

(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:

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

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:

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

(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) 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]

**§ 2808.5 Other cost considerations.**

(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.

(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