

§ 2882.4

43 CFR Ch. II (10–1–02 Edition)

(1) No right-of-way grant or temporary use permit shall be considered as being in effect until the applicant has accepted its terms, in writing. Written acceptance shall constitute an agreement between an applicant and the United States that, in consideration of the right to use Federal lands, the applicant shall abide by all terms and conditions contained therein and the provisions of applicable laws and regulations.

(m) At the discretion of the authorized officer, a provision may be placed in a right-of-way grant or temporary use permit requiring that no construction or use shall occur until a detailed construction, operation, rehabilitation and environmental protection plan has been submitted to the authorized officer and a notice to proceed has been issued. This requirement may be imposed for all or any part of the right-of-way.

[44 FR 58129, Oct. 9, 1979, as amended at 47 FR 12571, Mar. 23, 1982]

EFFECTIVE DATE NOTE: At 67 FR 61276, Sept. 30, 2002, §2882.3 was amended by revising paragraph (a), effective Nov. 29, 2002. For the convenience of the user, the revised text is set forth as follows:

§ 2882.3 Application processing.

(a) If the grant involves a pipeline 24 inches or more in diameter, BLM will not issue or renew the grant until after we notify the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

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§ 2882.4 Interagency agreements.

The authorized officer may enter into interagency cooperative agreements with the other Federal agencies having jurisdiction over the Federal lands involved in right-of-way grants or temporary use permits applied for and issued under this part.

Subpart 2883—Administration of Rights Granted

§ 2883.1 General requirements.

§ 2883.1–1 Cost reimbursement.

(a) (1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for admin-

istrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), prior to the United States having incurred such costs. All costs shall be paid before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to State or local governments or agencies or instrumentalities thereof where the Federal lands are used for governmental purposes and such lands and resources continue to serve the general public, except as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose principal source of revenue is derived from charges levied on customers for services rendered that are similar to services rendered by a profit making corporation or business enterprise.

(3) The applicant shall submit with each application a nonrefundable application processing fee in the amount required by a schedule of fees for this purpose contained in paragraph (c) of this section which shall be based on a review of the use of the Federal lands for which the application is made, the resources affected and the complexity and costs to the United States for processing required by an application for a right-of-way grant and shall be established according to the following general categories:

(i) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and no field examination of the lands affected by the application is required;

(ii) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and one field examination of the lands affected

by the application to verify the existing data is required;

(iii) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and two field examinations of the lands affected by the application to verify the data are required;

(iv) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which some original data are required to be gathered to comply with the National Environmental Policy Act; and two or three field examinations of the lands affected by the application are required;

(v) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which original data are required to be gathered to comply with the National Environmental Policy Act and evaluation of these data require formation of an interdisciplinary team; and three or more field examinations of the lands affected by the application are required;

(vi) *Category VI.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the cost of processing activities will be in excess of \$5,000.

(4)(i) The authorized officer may accept an application for the purpose of determining the appropriate category and the nonrefundable application processing fee; however, the authorized officer shall collect the full amount of the nonrefundable application processing fee prior to processing such application. A record of the authorized officer's category determination shall be made and given to the applicant, and the decision is a final decision for purposes of appeal under § 2884.1 of this title. Notwithstanding the pendency of such appeal, an application shall not be processed without payment of the fee determined by the authorized officer, and where such payment is made, the application may be processed and, if proper, the grant or permit issued. The authorized officer shall make any refund directed by the appeal decision.

Where the amount of the nonrefundable application processing fee submitted by an applicant exceeds the amount of such fee as determined by the authorized officer, the authorized officer shall refund any excess requested in writing by the applicant to apply all or part of any such refund to the grant monitoring fee required by paragraph (b) of this section or to the rental payment for such grant or permit.

(ii) During the processing of an application, the authorized officer may change a category determination to place an application in Category VI at any time that it is determined that the application requires preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made, and the decision is appealable in the same manner as an original category determination made under paragraph (a)(4)(i) of this section.

(5) (i) An applicant whose application is determined to be in Category VI shall, in addition to the nonrefundable application processing fee, reimburse the United States for the full actual administrative and other costs of processing the application. The nonrefundable application processing fee required under the fee schedule shall be credited toward the total cost reimbursement obligation of such applicant. When such an application is filed, the authorized officer shall estimate the costs expected to be incurred in processing the application, inform the applicant of the estimated amount to be reimbursed and require the applicant to make periodic payments of such estimated reimbursable costs prior to such costs being incurred by the United States.

(ii) If the payments required by paragraph (a)(5)(i) of this section exceed the actual costs to the United States, the authorized officer may 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 may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(iii) Prior to issuance of a right-of-way grant or temporary use permit, an

applicant subject to paragraph (a)(5)(i) of this section shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (a)(5)(i) of this section.

(iv) An applicant subject to paragraph (a)(5)(i) of this section whose application is denied is responsible for costs incurred by the United States in processing the application, and such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(v) An applicant subject to paragraph (a)(5)(i) of this section who withdraws an application before a decision is reached is responsible for costs incurred by the United States in processing the application up to the date the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred in terminating the application review process. Such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(6) When 2 or more applications for right-of-way grants are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by paragraph (a)(3) of this section. If reimbursement of actual costs is required under paragraph (a)(5)(i) of this section, each applicant shall be responsible for the costs identifiable with his/her application. Costs that are not readily identifiable with one 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 of the applicants in equal shares or such other proration as may be agreed to in writing by the applicants and authorized officer prior to the United States incurring such costs.

(7) When, through partnership joint venture or other business arrangement, more than one person partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such ap-

plicant shall be jointly and severally liable for costs under this section.

(8) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all of the applicants shall be jointly and severally liable for costs under this section for the entire system, subject, however, to the provisions of paragraph (a)(7) of this section.

(b) (1) After issuance of a right-of-way grant or temporary use permit for which a fee was assessed under paragraph (a) of this section, the holder thereof shall, prior to the United States having incurred such costs, reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved. The monitoring cost category shall be the same as that for the application processing category for that project.

(2) The holder shall submit a monitoring cost fee along with the written acceptance of the terms and conditions of the grant or permit pursuant to §2882.3(1) of this title. The amount of the required fee shall be determined by the schedule of fees described in paragraph (c) of this section. Acceptance of the terms and conditions of the grant or permit shall not be effective unless the required fee is paid.

(3) A holder whose application was determined to be in Category VI for application processing purposes shall reimburse the United States for the actual administrative costs and other costs of monitoring the grant or permit. When such a grant or permit is issued, the authorized officer shall estimate the costs expected to be incurred in monitoring the grant or permit, inform the holder of the estimated amount to be reimbursed and require the holder to make periodic payment of such estimated reimburseable costs prior to such costs being incurred by the United States.

(4) If the payments required by paragraph (b)(3) of this section exceed the actual costs of the United States, the authorized officer may adjust the next billing to reflect the overpayment, or

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make a refund from applicable funds under the authority of 43 U.S.C. 1734. A holder may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(5) Following termination of a right-of-way grant or temporary use permit, any grantee or permittee that was determined to be in Category VI shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (b)(3) of this section.

(c) The schedules of nonrefundable fees are as follows:

(1) For processing an application for a right-of-way and/or temporary use permit:

Category	Fee
I	\$125
II	275
III	350
IV	600
V	1,000
VI	15,000

¹ A minimum of—.

(2) For monitoring a right-of-way grant or temporary use permit:

Category	Fee
I	\$25
II	50
III	75
IV	150
V	250
VI	(¹)

¹ As required.

(d) Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits pertaining to the Trans-Alaska Pipeline System shall be made by payment of such sums as the Secretary determines to be required to reimburse the Department of the Interior for the actual costs of these services. In processing applications and administering right-of-way grants and temporary use permits relating to the Trans-Alaska Pipeline System, the Department of the Interior shall avoid unnecessary employment of personnel and needless expenditure of funds as determined by the Secretary. Reimbursement of costs shall be made for each quarter ending on the last day of

March, June, September and December. On or before the 16th day after the close of each quarter, the authorized officer shall submit to the permittee a written statement of costs incurred during that quarter which are reimbursable.

[50 FR 1309, Jan. 10, 1985 and 51 FR 31765, Sept. 5, 1986]

§ 2883.1-2 Rental payments.

Holders of right-of-way grants and temporary use permits issued under this part shall make rental payments in accordance with § 2803.1-2 of this title, except that the provisions of § 2803.1-2(b) of this title shall not apply.

[47 FR 38807, Sept. 2, 1982, as amended at 52 FR 25821, July 8, 1987]

§ 2883.1-3 Bonding.

The authorized officer may require a holder of a right-of-way grant or temporary use permit to furnish a bond, or other security satisfactory to him, to secure all or any of the obligations imposed by the right-of-way grant and temporary use permits and applicable laws and regulations.

§ 2883.1-4 Liability.

(a) Except as provided in paragraph (f) of this section holders shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standard shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting primarily from an act of war or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives,