CODE

OF FEDERAL

REGULATIONS

TITLE 25

Revised as of January 1, 1958

CONTAINING A CODIFICATION OF DOCUMENTS OF GENERAL APPLICABILITY AND FUTURE EFFECT AS OF JANUARY 1, 1958

With Ancillaries and Index

Published by the Federal Register Division, National Archives and Records Service
General Services Administration, as a Special Edition of the Federal Register
Pursuant to Section 11 of the Federal Register Act as Amended

Sec.
153.5 Permit requirements.
153.6 Grazing fees.

AUTHORITY: §§ 153.1 to 153.6 issued under R. S. 161; 5 U. S. C. 22.

SOURCE: §§ 153.1 to 153.6 appear at 22 F. R. 10581, Dec. 24, 1957.

§ 153.1 *Objectives.* It is the purpose of the regulations in this part to achieve the preservation and rehabilitation through proper grazing practices of the forage, forest, land, and water resources of the area known as the Pine Ridge Aerial Gunnery Range, referred to in this part as the Gunnery Range and to provide for the use of the area under proper permits.

§ 153.2 *Administration.* So far as applicable, §§ 151.5, 151.6, 151.22, 151.23 (a), and 151.26 of this chapter, together with any subsequent amendments, shall govern the administration of the Gunnery Range. All forms necessary to carry out the purpose of the regulations in this part shall be approved by the Commissioner of Indian Affairs.

§ 153.3 *Grazing permits.* Grazing privileges shall be granted through the medium of permits by the Superintendent of the Pine Ridge Indian Agency, Pine Ridge, South Dakota. Range units on which permits are not renewed, pursuant to § 153.5, shall be advertised for competitive bidding for a 30-day period, unless the Superintendent determines that a shorter period of advertisement is warranted, and proposals shall be received by sealed bids. Proposals shall be accompanied by cashier's check, certified check, or draft drawn on a solvent bank, or money order, payable to the Treasurer of the United States, for not less than 10 percent of the annual grazing fees due at the rate bid. The Superintendent shall post such advertisements at public places and the award of grazing privileges shall be made to the highest satisfactory bidder but any bidder entitled to preference, in accordance with § 153.4, may exercise such preference and meet the high bid. Such preference may be exercised by filing with the Superintendent a written notice within 10 days after the high bid has been announced. Such notice shall be accompanied by a cashier's check, certified check, or draft drawn on a solvent bank, or money order, payable to the Treasurer of the United States in an additional sum sufficient to meet the terms of the advertisement. Permits may provide for the cutting of hay by the permittee without additional charge, provided that the hay cut is fed on the unit to the livestock grazed under the permit. The Superintendent may prescribe such other rules as may be necessary to govern the cutting of hay so as to obtain proper utilization of the range. No permit shall be issued for farming purposes.

§ 153.4 *Preference in awarding permits.* In awarding grazing privileges, preference in meeting the high bid shall be given in the following order to:

(a) Former fee title holders, former Indian trust owners, and livestock operators, who owned established ranch headquarters within or adjacent to the Gunnery Range and who were using a portion of the Gunnery Range for grazing purposes at the time of its acquisition by the Department of the Army. This preference shall be given only to the extent of the use of the Gunnery Range by such persons prior to its acquisition by the Department of the Army.

(b) Indian allottees whose former allotments were within the Gunnery Range but whose ranch headquarters were not within the Gunnery Range.

§ 153.5 *Permit requirements.* Permits shall be limited to 1-year periods on an annual renewal basis subject to the following provisions:

(a) The Secretary of the Army may terminate any or all permits when the use of the area for grazing interferes with the purpose of the Gunnery Range.

(b) Permittees shall be responsible for the reasonable protection of all improvements within the permitted areas. Permittees shall be allowed to use for improvement purposes within the Gunnery Range such salvage materials as may be located on any lands within their permitted areas. Title to such materials shall, however, remain in the United States.

(c) Permittees shall maintain at their own expense all existing water facilities. They may, however, also develop and maintain such additional water facilities as they may elect, and shall have the privilege of removing, at the termination of their permits, such personal property as they may have installed on the premises.

(d) Permittees assume all risks of personal damage or of injury or loss to personal property incident to the use of the Gunnery Range, and agree to waive all claims which they may now have for damages or compensation for loss of personal property incident to the acquisition by the United States of any or all lands within the Gunnery Range.

(e) Permittees are prohibited from cutting timber.

(f) Permits do not establish any permanent rights of possession or use of permittees to the areas covered by their permits and the privileges granted are temporary only.

§ 153.6 *Grazing fees.* The minimum grazing fees charged for a permit renewed pursuant to § 153.5, or the minimum fee established for the issuance of a permit pursuant to § 153.3, shall be on a level with existing rates within the Pine Ridge Indian Reservation, less 20 percent to offset the risk assumed by the permittee in occupying the Gunnery Range subject to use for military purposes. All grazing fees shall be paid in advance to the Superintendent of the Pine Ridge Indian Agency.

SUBCHAPTER O—RIGHTS-OF-WAY—ROADS

Part 161—Rights-of-Way Over Indian Lands

Sec.
161.1 Definitions.
161.2 Purpose and scope of regulations.
161.3 Consent of landowners.
161.4 Permission to survey.
161.5 Permission to commence construction.
161.6 Disposition of deposit.
161.7 Application for right-of-way.
161.8 Maps.
161.9 Field notes.
161.10 Public survey.
161.11 Connection with natural objects.
161.12 Township and section lines.
161.13 Affidavit and certificate.
161.14 Appraisal and schedule of damages.
161.15 Deposit of damages.
161.16 Action on application.
161.17 Affidavit of completion.
161.18 Change of location.
161.19 Tenure of approved right-of-way grants.
161.20 Renewal of right-of-way grants.
161.21 Service lines.
161.22 Condemnation suits involving individually owned restricted lands.
161.23 Railroads.
161.24 Railroads in Oklahoma.
161.25 Oil or gas pipelines.
161.26 Telephone and telegraph lines; radio, television, and other communications facilities.
161.27 Power projects.
161.28 Public highways.
161.29 Drainage projects in Oklahoma.
161.30 Withdrawal and restoration of Superintendent's authority.
161.31 Appeals.

AUTHORITY: §§ 161.1 to 161.31 issued under R. S. 161, sec. 1, 30 Stat. 94; sec. 1, 32 Stat. 260, sec. 1, 33 Stat. 359, sec. 4, 37 Stat. 194, sec. 6, 62 Stat. 18; 5 U. S. C. 22, 25 U. S. C. 328. Statutory provisions interpreted or applied are cited to text in parentheses.

SOURCE: §§ 161.1 to 161.31 appear at 22 F. R. 10581, Dec. 24, 1957.

§ 161.1 *Definitions.* As used in this part:

(a) "Secretary" means Secretary of the Interior or his duly authorized representative.

(b) "Commissioner" means Commissioner of Indian Affairs or his duly authorized representative.

(c) "Area Director" means the officer in charge of an Area Office of the Bureau of Indian Affairs or his duly authorized representative.

(d) "Superintendent" means the superintendent or other officer in charge of an Indian Agency, School, Hospital, or other field unit of the Bureau of Indian Affairs.

(e) "Indians" include (1) Indians, (2) Eskimos, or (3) Aleuts.

(f) "Tribe" means a nation, tribe, band, pueblo, community, or other group of Indians residing on a reservation, rancheria, or other reserve within the continental United States or Alaska.

(g) "Tribal Council" means the official council, business committee, or other body, or the governor or other individual, authorized to represent a tribe in consenting to the granting of the rights-of-way provided for in this part.

(h) "Restricted lands" means (1) lands or interests in lands held by the

United States in trust for a tribe; (2) lands or interests in lands held by a tribe in restricted fee or Indian title, including Pueblo lands; (3) lands or interests in lands held by the United States in trust for individual Indians; (4) lands or interests in lands held by individual Indians subject to restrictions against alienation; or (5) other lands acquired or set aside by the United States for the use and benefit of Indians.

(b) "Damages" include the compensation, if any, due the landowner for a right-of-way.

§ 161.2 *Purpose and scope of regulations.* (a) Except as indicated in paragraph (b) of this section, the regulations in this part prescribe the procedures, terms, and conditions under which rights-of-way over and across restricted lands may be granted.

NOTE: For irrigation rights-of-way, see sec. 18, 26 Stat. 1101, as amended, 34 Stat. 375; 43 U. S. C. 946.

(b) The regulations in this part do not cover the granting of rights-of-way for primary hydroelectric transmission lines over and across tribal lands. Applications for such rights-of-way must be filed with the Federal Power Commission.

§ 161.3 *Consent of landowners.* (a) No right-of-way shall be granted over and across any restricted lands belonging to a tribe, nor shall any permission to survey or to commence construction be issued with respect to any such lands, without the prior written consent of the tribal council.

(b) Except as provided in paragraph (c) of this section, no right-of-way shall be granted over and across any individually owned restricted lands, nor shall any permission to survey or to commence construction be issued with respect to any such lands, without the prior written consent of the owner or owners of such lands and the approval of the Superintendent.

(c) The Superintendent may issue permission to survey or to commence construction with respect to, and he may grant rights-of-way over and across, restricted lands of individual Indians without the consent of the individual Indian owners when (1) the individual owner of the land or of an interest therein is a minor or a person non compos mentis, and the Superintendent finds that such grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages; (2) the land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant; (3) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant; (4) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Superintendent finds that the grant will cause no substantial injury to the land or any owner thereof; (5) the owners of interests in the land are so numerous that the Superintendent finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

§ 161.4 *Permission to survey.* Anyone desiring to obtain permission to survey a right-of-way upon and across restricted lands must file a written application therefor with the Superintendent. The application shall adequately describe the proposed project, and it shall be accompanied by the written consent of the landowners as required by § 161.3, by satisfactory evidence of the good faith and financial responsibility of the applicant, and, by a check or money order of sufficient amount to cover double the estimated damages which may be sustained as a result of the survey. An application filed by a corporation must be accompanied by proof of corporate existence and of compliance with State laws entitling the applicant to operate in the State in which the restricted land is situated. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or, if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Department an application accompanied by the evidence required in this section, a reference to the date and place of such filing, accompanied by proof of current financial responsibility and good faith, will be sufficient. Upon receipt of an application made in compliance with the regulations of this part, the Superintendent may grant the applicant written permission to survey.

*The language of this subparagraph is taken from 25 U. S. C. 324.

§ 161.5 *Permission to commence construction.* Subject to the provisions of § 161.3, permission to proceed with construction work on a right-of-way may be granted by the Superintendent at the same time or after permit to survey is issued and before full compliance is made with the regulations in this part, provided the applicant deposits with the Superintendent in advance such amount, in addition to that deposited in accordance with § 161.4, as will be sufficient to equal twice the estimated damages which may result from the survey and construction, and agrees in writing to comply promptly with the regulations in this part. The amount of the deposit, if the applicant is an agency of the Federal or of a State Government, will be a sum to cover only the estimated damages whenever it be shown to the satisfaction of the Superintendent that the funds of the applicant are not available for the deposit of the greater amount. Each deposit shall be held in a "special deposit" account until the actual damages have been determined and the application for the right-of-way has been approved.

§ 161.6 *Disposition of deposit.* Except as provided in this section, all that part of the deposit required by § 161.5 which is not required for the payment of damages due the landowners shall be refunded to the applicant upon satisfactory completion of the project and compliance with the requirements of § 161.8. Whenever by reason of unnecessary delay or otherwise the applicant fails to show good faith or to exercise due diligence in complying with the regulations of this part, the Superintendent shall, after giving the applicant fifteen days' written notice to show cause why the construction permit should not be rescinded and the application for right-of-way rejected, submit a full report on the matter to the Area Director. If it appears to the satisfaction of the Area Director that the applicant has failed to show good faith or to exercise due diligence in complying with the law and the regulations of this part, the Area Director may rescind the construction permit and reject the application, and notify the applicant of such action and that the entire amount of the applicant's deposit will be paid to the interested Indians as liquidated damages after 30 days from the receipt of such notice unless the applicant files a written notice of appeal from such action pursuant to § 161.31, in which event the deposit shall be held pending the final determination of the appeal.

§ 161.7 *Application for right-of-way.* After a survey has been authorized and completed, formal application, in duplicate, for the right-of-way, if desired, shall be filed promptly with the Superintendent. The application shall cite the statute or statutes under which it is filed and the width and length of the desired right-of-way, and shall be accompanied by a duly executed stipulation expressly agreeing to the following:

(a) To construct and maintain the right-of-way in a workmanlike manner.

(b) To pay promptly all damages, in addition to the deposit made pursuant to § 161.5, determined by the Superintendent to be due the landowners on account of the construction and maintenance of the right-of-way.

(c) To indemnify the landowners against any liability for damages to life or property arising from the occupancy or use of the lands by the applicant.

(d) To restore the lands as nearly as may be possible to their original condition upon the completion of construction.

(e) That the applicant will not interfere with the use of the lands by or under authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way was granted.

§ 161.8 *Maps.* (a) Each application for a right-of-way must be accompanied by a map of definite location on linen tracing in duplicate, and four blue-print copies thereof. Three linen tracings shall be filed if the applicant desires the return of a linen tracing showing the approved right-of-way. The field notes shall accompany the application, as provided for in § 161.9. The width of the right-of-way shall be clearly shown on the linen tracing.

(b) A separate map shall be filed for each section of 20 miles of right-of-way, but the map of the last section may include any excess of 10 miles or less.

(c) The scale of maps showing the line of route normally should be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when necessary and when an increase in scale cannot be

96023—58——11

avoided through the use of separate field notes, but the scale must not be increased to such extent as to make the maps too cumbersome for convenient handling and filing.

(d) The map shall show the name of the allottee and the allotment number of each tract of allotted land, and shall clearly designate each tract of tribal land affected, together with the sections, townships, and ranges in which the lands crossed by the right-of-way are situated.

§ 161.9 *Field notes.* Field notes of the survey shall appear along the line indicating the right-of-way on the map, unless the map would be too crowded thereby to be easily legible, in which event the field notes may be filed separately on linen tracing in such form that they may be folded readily for filing. Where field notes are placed on separate linen tracing, it will be necessary to place on the map only a sufficient number of station numbers so as to make it convenient to follow the field notes. The field notes shall be typewritten. Whether endorsed on the map or filed separately, the field notes shall be sufficiently complete so as to permit the line indicating the right-of-way to be readily retraced on the ground from the notes. They shall show whether the line was run on true or magnetic bearings, and, in the latter case, the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

§ 161.10 *Public survey.* (a) The termini of the line of route shall be fixed by reference of course and distance to the nearest existing corner of the public survey. The map, as well as the engineer's affidavit and the certificate, shall show these connections.

(b) When either terminal of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey if not more than 6 miles distant from it, and the single bearing and distance from the terminal point to the corner computed and noted on the map, in the engineer's affidavit, and in the certificate. The notes and all data for the computation of the traverse must be given.

§ 161.11 *Connection with natural objects.* When the distance to an established corner of the public survey is more than 6 miles, this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark, and course and distance to the terminus. There must be given an accurate description of the mark and full data concerning the traverse, and the engineer's affidavit and the certificate on the map must state the connections.

§ 161.12 *Township and section lines.* Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner shall be noted. The map shall show these distances and the station numbers at the points of intersection. The field notes shall show these distances and station numbers.

§ 161.13 *Affidavit and certificate.* (a) There shall be subscribed on the map of definite location an affidavit executed by the engineer, who made the survey and a certificate executed by the applicant, both certifying to the accuracy of the survey and map and both designating by termini and length, in miles and decimals, the line of route for which the right of way application is made.

(b) Maps covering roads built by the Bureau of Indian Affairs which are to be transferred to a county or state government shall contain an affidavit as to the accuracy of the survey, executed by the Bureau highway engineer in charge of road construction, and a certificate by the state or county engineer or other authorized state or county officer accepting the right of way and stating that he is satisfied as to the accuracy of the survey and map.

§ 161.14 *Appraisal and schedule of damages.* As soon as practicable after a right-of-way application has been filed as provided for in this part, or after the issuance of permission to survey or commence construction, the Superintendent shall cause an appraisal to be made of the damages due the landowners. Upon the basis of the appraisals thus made, the Superintendent shall prepare separate schedules for the individual lands and for the tribal lands traversed by the right-of-way described in the application. The individual land schedule shall identify thereon the allotment number and the name of the allottee of each forty-acre tract or part of each legal subdivision thereof, and shall set forth in separate columns the acreage taken from each subdivision, the value per acre, the damages to improvements or adjoining land or other property, and the total amount of damages due each land owner. Except for the allotment numbers and the names of the allottees whose lands are involved, the schedule for tribal lands shall contain like information. The Superintendent shall furnish the applicant a copy of the schedules, together with the latest known addresses of the owners.

§ 161.15 *Deposit of damages.* Upon receipt of the schedule of damages, the applicant must deposit with the Superintendent the total amount of damages as shown on the schedules, less any deposit previously made under §§ 161.4 and 161.5. The amount so deposited shall be held in a "special deposit" account for distribution, upon the approval of the application, to or for the account of the owners.

§ 161.16 *Action on application.* Upon satisfactory compliance with the regulations in this part, the Superintendent is authorized to approve the application by endorsing his approval on the map of definite location. Upon approval of the application, the Superintendent shall promptly notify the applicant, and thereafter the applicant may proceed with the construction work, if such permission has not been obtained under § 161.5. One copy of the approved linen tracing of the right-of-way map bearing the written signature of the Superintendent shall be transmitted to the Commissioner. One linen tracing and one blueprint copy of the map of definite location shall be filed with the Bureau of Land Management, except in the case of rights-of-way across lands in Oklahoma. One linen tracing of the map of definite location of the right-of-way across lands in Oklahoma shall be forwarded to the Bureau of Land Management, except that in the case of a right-of-way traversing lands in the Osage or the Five Civilized Tribes Reservations no copy of the map of definite location shall be furnished to the Bureau of Land Management. One copy of the linen tracing shall be forwarded to the applicant if, and only if, three linen tracings were filed as provided in § 161.8.

§ 161.17 *Affidavit of completion.* Upon the completion of the construction of any right-of-way, the applicant shall promptly file with the Superintendent an affidavit of completion, in duplicate, executed by the engineer and certified by the applicant. The Superintendent shall transmit one copy of the affidavit to the Commissioner for filing.

§ 161.18 *Change of location.* If any change from the location shown upon the approved maps is found to be necessary on account of engineering difficulties or otherwise, amended maps and field notes of the new location shall be filed, and a right-of-way for such new route or location shall be subject to approval, the ascertainment of damages, and the payment thereof, in all respects as in the case of the original location, before construction work may proceed upon such new right-of-way, unless permission has been obtained in accordance with § 161.5.

§ 161.19 *Tenure of approved right-of-way grants.* All rights-of-way granted under the regulations in this part shall be in the nature of easements or permits for the periods stated therein. They are terminable upon abandonment or discontinuance of the use for which granted. Rights-of-way for railroads, telephone lines, telegraph lines, and public highways shall be without limitation as to term of years. Rights-of-way for oil or gas pipe lines, and for telephone, telegraph, and water lines incident to the operation of oil and gas pipe lines, shall be limited to 20 years and shall be subject to renewal for a like term upon compliance with the applicable regulations. Rights-of-way for all other purposes shall be for a period of not to exceed 50 years, as fixed by the Superintendent and stated in the grant, and shall be subject to renewal for a like term upon compliance with the applicable regulations.

§ 161.20 *Renewal of right-of-way grants.* On or before the termination date of any right-of-way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or status of the original right-of-way grant, the applicant may file with his application a certificate under oath setting out this fact, and the Superintendent, with the consent of the Indians, may thereupon extend the grant for a

like term of years, upon the payment of compensation in the amount fixed and determined by the Superintendent. If any change in the size, type, or location of the right-of-way is involved, the application for renewal shall be treated and handled as in the case of an original application for a right-of-way.

§ 161.21 *Service lines.* (a) An agreement shall be executed by and between the landowner or a legally authorized occupant or user of the land and the applicant before any work by the applicant may be undertaken to construct a service line across such land. Such a service line shall be limited in the case of power lines to a voltage of 7.5 kv or less except lines to serve irrigation pumps which shall be limited to a voltage not to exceed 14.5 kv. Service lines shall be for the sole purpose of supplying the individual owners or authorized occupants or users of land including schools and churches with telephone, water, electric power, gas, or other utilities for domestic and agricultural uses by such owners, occupants or users of the land.

(b) A similar agreement to that required in paragraph (a) of this section shall be executed by the tribe or legally authorized occupant or user of tribal land and the applicant before any work by the applicant may be undertaken on the land for the construction of a service line across such tribal land. Such a service line shall be for the sole purpose of supplying such occupants or users of such tribal land with any of the services dealt with in paragraph (a) of this section. No agreement under this paragraph shall be valid unless its execution shall have been duly authorized in advance of construction by the governing body of the Indian tribe whose land is affected.

(c) In order to encourage the use of telephone, water, electric power, gas or other utilities and facilitate the extension of these modern conveniences to sparsely-settled Indian areas without undue costs the agreement referred to in paragraph (a) of this section shall only be required to include or have appended thereto, a plat or diagram showing with particularity the location, size, and extent of the line. When the plat or diagram is placed on a separate sheet it shall bear the signature of the parties. In case of tribal land, the agreement shall be accompanied by a certified copy of the tribal authorization.

(d) An executed copy of the agreement, together with a plat or diagram, and in the case of tribal land, an authenticated copy of the tribal authorization shall be filed with the superintendent of the reservation on which the service line is to be built within 30 days after the date of its execution. Failure to meet this requirement may result in the removal of any such improvements placed on the land at the expense of the party responsible for the placing of such improvements thereon and subject such party to the payment of damages caused by his unauthorized act.

§ 161.22 *Condemnation suits involving individually owned restricted lands.* The facts relating to any condemnation action to obtain a right-of-way upon individually owned restricted land shall be reported immediately by the Superintendent to the Area Director and the Commissioner, in order that appropriate action may be taken to safeguard the interests of the Indians.

§ 161.23 *Railroads.* (a) Rights-of-way for railroads shall not exceed 50 feet in width on each side of the center line of the road, except where there are heavy cuts and fills, when they shall not exceed 100 feet in width on each side of the road. The right-of-way may include grounds adjacent to the line for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed 200 feet in width by a length of 3,000 feet, with no more than one station to be located within any one continuous length of 10 miles of road.

(b) Short spurs and branch lines may be shown on the map of the main line, separately described by termini and length. Longer spurs and branch lines shall be shown on separate maps. Grounds desired for station purposes may be indicated on the map of definite location but separate plats must be filed for such grounds. The maps shall show any other line crossed, or with which connection is made. The station number shall be shown on the survey thereof at the point of intersection. All intersecting roads must be represented in ink of a different color from that used for the line for which application is made.

(c) Plats of railroad station grounds shall be drawn on a scale of 400 feet to an inch, and must be filed separately from the line of route. Such plats shall

show enough of the line of route to indicate the position of the tract with reference thereto. Each station ground tract must be located with respect to the public survey as provided in § 161.10, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(d) If any proposed railroad is parallel to, and within 10 miles of, a railroad already built or in course of construction, it must be shown wherein the public interest will be promoted by the proposed road. Where the Interstate Commerce Commission has passed on this point, a certified copy of its findings must be filed with the application.

(e) The applicant must certify that the road is to be operated as a common carrier of passengers and freight.

(f) The applicant shall execute and file, in duplicate, a stipulation obligating the company to use all precautions possible to prevent forest fires and to suppress such fires when they occur, to construct and maintain passenger and freight stations for each Government townsite, and to permit the crossing, in a manner satisfactory to the Government official in charge, of the right-of-way by canals, ditches, and other projects.

(g) A railroad company may apply for sufficient land for ballast or material pits, reservoirs, or tree planting to aid in the construction or maintenance of the road. The authority to use any land for such purposes shall terminate upon abandonment or upon failure to use the land for such purposes for a continuous period of two years.

(Sec. 1, 18 Stat. 482, secs. 1, 2, 30 Stat. 990, as amended, 35 Stat. 701, as amended, secs. 1, 5, 62 Stat. 17, 18; 43 U. S. C. 934, 25 U. S. C. 312, 313, 320, 323–327).

§ 161.24 *Railroads in Oklahoma.* (a) Railroad rights-of-way over and across restricted lands in Oklahoma may be acquired in accordance with the provisions of the act of February 28, 1902 (32 Stat. 43).

(b) One copy each on linen tracing of the map of definite location showing the line of route and all lands included within the right-of-way must be filed with the Commissioner and the Superintendent. When tribal lands are involved, a copy of the map must also be filed with the tribal council.

(c) Before any railroad may be constructed or any lands taken or condemned for any of the purposes set forth in section 13 of the act of February 28, 1902 (32 Stat. 43), full damages shall be paid to the Indian owners.

(d) After the maps have been filed, the matter of damages shall be negotiated by the company directly with the Indian owners. If an amicable settlement cannot be reached, the amount to be paid as compensation and damages shall be fixed and determined as provided in the statute. If court proceedings are instituted, the facts shall be reported immediately by the Superintendent to the Area Director and the Commissioner, so that appropriate action may be taken to safeguard the interests of the Indians.

(32 Stat. 43)

§ 161.25 *Oil or gas pipelines.* (a) All oil or gas pipelines, including connecting lines, shall be buried a sufficient depth below the surface of the land so as not to interfere with cultivation. Whenever the line is laid under a road or highway, the right-of-way for which has been granted under an approved application pursuant to an act of Congress, its construction shall be in compliance with the applicable Federal and State laws; during the period of construction, at least one-half the width of the road shall be kept open to travel; and, upon completion, the road or highway shall be restored to its original condition and all excavations shall be refilled. Whenever the line crosses a ravine, canyon, or waterway, it shall be laid below the bed thereof or upon such superstructure as will not interfere with the use of the surface.

(b) The size of the proposed pipeline must be shown in the application, on the map and in the engineer's affidavit and applicant's certificate. The application and map shall specify whether the pipe is welded, screw-joint, dresser, or other type of coupling. Should the applicant of an approved right-of-way desire at any time to lay additional line or lines of pipe in the same trench, or to replace the original line with larger or smaller pipe, written permission must first be obtained from the Superintendent, and all damages to be sustained by the owners must be paid in advance in the amount fixed and determined by the Superintendent.

(c) Applicants for oil or gas pipeline rights-of-way may apply for additional

land for pumping stations or tank sites. The maps shall show clearly the location of all such structures and the location of all lines connecting with the main line. Applicants for lands for pumping stations or tank sites shall execute and file a stipulation agreeing as follows:

(1) Upon abandonment of the right-of-way to level all dikes, fire-guards, and excavations and to remove all concrete masonry foundations, bases, and structural works and to restore the land as nearly as may be possible to its original condition.

(2) That a grant for pumping station or tank site purposes shall be subservient to the owner's right to remove or authorize the removal of oil, gas, and other mineral deposits; and that the structures for pumping station or tank site will be removed or relocated if necessary to avoid interference with the exploration for or recovery of oil, gas, or other minerals.

(d) Purely lateral lines connecting with oil or gas wells on restricted lands may be constructed upon filing with the Superintendent a copy of the written consent of the Indian owners and a blueprint copy of a map showing the location of the lateral. Such lateral lines may be of any diameter or length, but must be limited to those used solely for the transportation of oil or gas from a single tract of restricted land to another lateral or to a branch of the main line.

(e) The applicant, by accepting a pipeline right-of-way, thereby agrees that the books and records of the applicant shall be open to inspection by the Secretary or his duly authorized representative at all reasonable times, in order to obtain information pertaining in any way to oil or gas produced from restricted lands or other lands under the jurisdiction of the Secretary.

(Secs. 1, 2, 33 Stat. 65, as amended, secs. 1-5, 62 Stat. 17, 18; 25 U. S. C. 321, 323-327)

§ 161.26 *Telephone and telegraph lines; radio, television, and other communications facilities.* (a) The application and maps shall specify the width of the right-of-way desired. No right-of-way shall be granted for a width in excess of 50 feet on each side of the center line, unless special requirements are clearly set forth in the application which fully justify a width in excess of 50 feet on each side of the center line.

(b) Applicants engaged in the general telephone and telegraph business may apply for additional land for office sites. The maps showing the location of proposed office sites shall be filed separately from those showing the line of route, and shall be drawn to a scale of 50 feet to an inch. Such maps shall show enough of the line of route to indicate the position of the tract with reference thereto. The tract shall be located with respect to the public survey as provided in § 256.10, and all buildings or other structures shall be plotted on a scale sufficiently large to show clearly their dimensions and relative positions.

(c) Rights of way for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, shall be limited to 200 feet on each side of the centerline of such lines and poles; radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities shall be limited to an area not to exceed 400 feet by 400 feet.

(Secs. 1, 2, 30 Stat. 990, as amended; sec. 3, 31 Stat. 1083, secs. 1-5, 62 Stat. 17, 18, 66 Stat. 95; 25 U. S. C. 312, 313, 319, 323-327)

§ 161.27 *Power projects.* (a) All applications for authority to survey, locate, or commence construction work on any project for the generation of electric power, or the transmission or distribution of electric power of 33 kv or higher involving lands other than tribal lands dealt with in the exception contained in § 161.2 shall be referred by the superintendent through the area director to the Commissioner who will secure the approval of the Office of the Assistant Secretary of the Interior for Water and Power Development or such other agency as may be designated for the area involved, for consideration of the relationship of the proposed project to the power development program of the United States. Where the proposed project will not conflict with the program of the United States, the area director, upon notification to that effect, will so notify the superintendent, who may then proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the project in order to eliminate conflicts with the power development program of the United States, the superintendent shall obtain from the applicant written consent to or compliance

with such requirements before taking further action on the application.

(b) The application and maps shall specify the width of the right-of-way desired. Rights-of-way for power lines will be limited to 50 feet on each side of the center line unless sufficient justification is furnished for a greater width.

(c) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision, for avoiding inductive interference between any project transmission line or other project works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(d) An applicant for a right-of-way for a transmission line having a voltage of 33 kv or more must, in addition to the stipulation required by § 161.7, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) The applicant agrees that, in the event it becomes necessary for the United States to acquire the applicant's transmission line or facilities constructed on or across such right-of-way, the United States reserves the right to acquire such line or facilities at a sum to be determined upon by a representative of the applicant, a representative of the Secretary of the Interior, and a third representative to be selected by the other two for the purpose of determining the value of such property thus to be acquired by the United States. No value, however, shall be allowed at any such determination for the right-of-way granted to the applicant under authority of the regulations of this part.

(2) To allow the Department of the Interior to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the grant for the transmission of electrical power in connection with the applicant's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the applicant and the applicant shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the applicant for the transmission of electrical power in connection with the applicant's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the applicant to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the applicant's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the applicant's line will not be impaired.

(iv) After any interconnection is completed, the applicant shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the applicant's control between the applicant's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the applicant will be operated in parallel.

(vi) The transmission of electrical power by the Department over the applicant's line will be effected in such manner and quantity as will not interfere unreasonably with the applicant's use and operation of the line in accordance with the applicant's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The applicant will not be obligated to allow the transmission over its line by the Department of electrical power to any person receiving service from the applicant on the date of the filing of the application for a grant, other

than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the applicant an equitable share of the total monthly cost of maintaining and operating the part of the applicant's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the applicant's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization in accordance with the system of accounts prescribed by the Federal Power Commission on the applicant's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the applicant that surplus capacity is available for utilization by the Department, the applicant needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the applicant may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance of the applicant's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the grant, the applicant desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission by the Department of electrical power over the applicant's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the applicant and the Secretary of the Interior or his designee.

(c) Applicants may apply for additional lands for generating plants and appurtenant structures. The lands desired for such purposes may be indicated on the map showing the definite location of the right-of-way, but separate maps must be filed therefor. Such maps shall show enough of the line of route to indicate the position of the tract with respect to said line. The tract shall be located with respect to the public survey as provided in § 161.10, and all buildings or other structures shall be plotted on a scale sufficiently large to show clearly their dimensions and relative positions.

(d) Applicants, in lieu of furnishing maps based on surveys, including field notes as required by §§ 161.8 to 161.13, inclusive, may obtain rights of way for distribution lines of less than 33 kv and telephone lines by filing two blue tracings and four print copies of a drawing showing the size and the location of the line in relation to the boundaries of each tract of land involved. The drawings shall show thereon whether the land to be crossed by the right of way is tribal or allotted. If allotted land, there shall appear on the drawing in addition to the section, township, and range number the name of each allottee and the respective allotment number. Each drawing shall contain a certificate executed by the engineer or the person who prepared the drawing, and the president, or other proper official of the applicant, certifying that the line is located as shown on the drawing.

(31 Stat. 790, as amended, 36 Stat. 1253, as amended, secs. 1-5, 64 Stat. 17, 16 U. S. C. 796, 797, 25 U. S. C. 323-327)

§ 161.28 *Public highways.* (a) The appropriate State or local authorities may apply under the regulations in this part for authority to open public highways across restricted lands in accordance with State laws.

(b) In lieu of making application under the regulations in this part, the appropriate State or local authorities in Nebraska or Montana may, upon compliance with the requirements of the act of March 4, 1915 (38 Stat. 1188), lay out and open public highways in accordance with the respective laws of those States. Under the provisions of that act, the applicant must serve the Superintendent with notice of intention to open the proposed road and must submit a linen tracing of a map of definite location showing the width of the proposed road for the approval of the Superintendent prior to the laying out and opening of the road.

(c) Applications for public highway rights-of-way over and across roadless and wild areas shall be considered in accordance with the regulations contained in Part 162 of this chapter.

(Secs. 4, 31 Stat. 1084, 38 Stat. 1198, secs. 1-5, 64 Stat. 17, 16 U. S. C. 796, 797, 25 U. S. C. 323-327)

§ 161.29 *Drainage projects in Oklahoma.* (a) Applications for rights-of-way for drainage purposes and applications for the approval of drainage assessments against individually owned restricted lands in Oklahoma may be filed under the regulations in this part by the County Commissioners of the county or counties in which a drainage district is located. The application shall show that the State laws governing the drainage of lands have been complied with, and the application must be accompanied by a certified copy of the viewer's report, including the viewer's schedule of assessments and damages.

(b) The Superintendent may approve drainage assessments against restricted lands whenever it appears to his satisfaction that the lands are being properly drained and are being assessed justly, in comparison with the assessments made against other lands in the drainage district.

(c) Neither the United States nor the land owner shall be obligated to pay any approved assessment, but the Superintendent may, upon the written request of the land owner, pay the approved assessment out of any funds held under the custody or control of the Department and belonging to the land owner. Unpaid assessments shall not constitute a lien against the restricted lands involved, and none of the laws of Oklahoma relating to the collection of unpaid assessments shall have any application to restricted lands.

(Sec. 4, 31 Stat. 194, 36 Stat. 310, as amended, 41 Stat. 1204)

§ 161.30 *Withdrawal and restoration of Superintendent's authority.* The Commissioner, or the Area Director with the approval of the Commissioner, may, upon written notice to a particular Superintendent, withdraw from such Superintendent the authority granted to Superintendents in the regulations of this part, and thereafter such authority withdrawn from such Superintendent shall be exercised by the Area Director or such other official as may be designated by the Area Director with the approval of the Commissioner. Any such authority withdrawn from a Superintendent may be restored to him by the Area Director with the approval of the Commissioner.

§ 161.31 *Appeals.* Action taken by a Superintendent shall be subject to the right of appeal to the Area Director. Action taken by an Area Director, including action taken on an appeal from a Superintendent, shall be subject to the right of appeal to the Commissioner. Action taken by the Commissioner shall be subject to appeal to the Secretary. An appeal must be filed in writing with the officer from whom the appeal is being taken, and must be filed within 30 days after the receipt of notice respecting the action to which objection is taken. An appeal filed with the Superintendent shall be promptly transmitted by him, with the record in the case, to the Area Director. An appeal filed with the Area Director shall be transmitted promptly by him, with the record in the case, to the Commissioner. An appeal filed with the Commissioner shall be transmitted promptly by the Commissioner, with the record, to the Secretary.

Part 162—Roads of the Bureau of Indian Affairs

Sec.
162.1 Purpose.
162.2 Definitions.
162.3 Construction, maintenance, repair, and improvement.
162.4 Approval of road plans and designation as roads of the Bureau of Indian Affairs.
162.5 Consent of Indian landowners.
162.6 Use of roads.
162.7 Roadless and wild areas.
162.8 Transfer of jurisdiction for maintenance to a State.
162.9 Cooperation with States or Indian Tribes.

AUTHORITY: §§ 162.1 to 162.9 issued under 45 Stat. 750; 25 U. S. C. 318a. Interpret or apply sec. 6, 49 Stat. 1621, as amended; 25 U. S. C. 318b.

SOURCE: §§ 162.1 to 162.9 appear at 22 F. R. 10587, Dec. 24, 1957.

§ 162.1 *Purpose.* The regulations in this part govern the survey, construction, maintenance, repair, and improvement of roads serving Indian lands that are