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TITLE 23—HIGHWAYS  
TITLE 24—HOUSING CREDIT  
TITLE 25—INDIANS

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considered cause for refusing to make further issues of supplies to such persons; except in cases where the supplies are used by immediate members of the family who are contributing to the support of the individual or individuals to whom the supplies are issued.\*† [Par. 4]

**251.5 Special authority required for implements.** All goods and supplies provided for that purpose may be issued without special authority, except livestock, wagons, harness, and the larger and more expensive agricultural implements, such as plows, harrows, cultivators, mowers, reapers, and sulky rakes. When the distribution of such supplies is contemplated the agent or Superintendent is required to submit a request for authority to make the issue, stating specifically the number of each kind to be issued, and a copy of the authority therefor must be attached to the property register in support of the transaction.\*† [Par. 5]

**251.6 Barter and sale prohibited.** Goods and supplies issued to Indians are for their own use and benefit and not for the purpose of sale and barter. The Indians shall, therefore, be given to understand that the title to such property will remain in the United States and that in the event of its being unlawfully sold, bartered, given away, removed from the reservation, or not put to proper uses, the right to its possession shall revert to the Government and it may be retaken by the agent or any other Government officer.\*† [Par. 6]

**251.7 Receipt and agreement not to sell.** In addition to requiring a receipt in appropriate form the Indians should be required to sign an agreement not to sell, exchange, give away, or otherwise dispose of the articles received without the full knowledge and consent in writing of the Superintendent or other person in charge of the jurisdiction to which they belong.\*† [Par. 7]

**251.8 Prior authority necessary to loan property.** The loaning of Government goods and supplies to traders or other persons is not permissible under any circumstances whatsoever, unless previously authorized by the Indian Office. This does not apply to agricultural implements or other items kept at the agency for the common use of the Indians. Such property may be loaned to the Indians as needed but not to other persons.\*† [Par. 8]

## Subchapter W—Rights-of-Way

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## GENERAL

**Section 256.1 Authority to survey.** Except as hereinafter provided, no company or individual is authorized to survey, locate, or do any construction work upon Indian lands for right-of-way pur-

poses until authority therefor has been obtained from the Secretary of the Interior. The Superintendent or other officer in charge is expected to keep closely in touch with conditions within his jurisdiction and when any unauthorized entry upon Indian lands is made the individual or corporation responsible therefor should be immediately notified to cease operations until proper authority has been obtained. Full report of the facts and of the action taken should be made promptly by the Superintendent or other officer in charge through the Commissioner of Indian Affairs, and if request to cease operations is not complied with, that fact should be reported by wire.\*† [Sec. 1]

\*§§ 256.1 to 256.97, inclusive, (with exceptions noted in the text,) issued under the authority contained in R.S. 161 ; 5 U.S.C. 22.

†The source of §§ 256.1 to 256.97, inclusive, (except for amendments noted in the text,) is Regulations concerning rights of way over Indian lands, Secretary of the Interior, May 22, 1928.

**256.2 Application to survey.** Any company or individual desiring to obtain authority to survey or locate a right-of-way project upon Indian lands should file an application with the superintendent or other officer in charge of the lands involved, for transmission to the Secretary of the Interior through the Commissioner of Indian Affairs. Such application should (in as particular a manner as possible) describe the project in contemplation, and must be accompanied, in the case of a company or corporation, by—

(a) A copy of its articles of incorporation, duly certified to by the proper officer of the company under its corporate seal or by the secretary of State where organized. If application is made by an unincorporated firm or association the facts should be stated therein.

(b) A copy of the State law under which the company was organized, with the certificate of the governor or secretary of the State that same is the existing law.

(c) When the law under which the application is filed directs that the articles of association or other papers connected with the organization be filed with any State officer, the certificate of such officer that the same have been filed according to law, with the date of the filing thereof.

(d) When a company is operating in a State other than that in which it is incorporated, the certificate of the proper officer of the State is required that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(e) The official statement, under seal of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the project covered by the application according to existing law. (Form 1)<sup>35</sup>

(f) An affidavit by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2)<sup>35</sup>

(g) If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to this office by the governor or secretary of any State, a company

<sup>35</sup> Forms may be obtained from the local Indian Service Superintendent.

organized in such State may file, in lieu of the requirements hereof, a certificate of the governor or secretary of the State that no change has been made since a given date, not later than that of the laws last forwarded.

(h) Satisfactory evidence of the good faith of the company and its financial ability in the matter of the construction of the project covered by the application.\*† [Sec. 2]

**256.3 Prior application.** If the showing required by § 256.2 has previously been filed in this department, a reference by the applicant to the date and place of such filing will be sufficient.\*† [Sec. 3]

**256.4 Construction permits.** Authority to proceed with construction work on a right-of-way project may be granted where the circumstances warrant such action 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 or other officer in charge of the Indian lands involved twice the estimated amount of damages to be carried by him as a "special deposit" until the actual damages are fixed and determined as herein provided, and agrees to make full and prompt compliance with all the requirements herein set forth. Application for such authority should be filed with the Superintendent or other officer in charge, who will promptly notify the applicant of the deposit required and upon receipt thereof transmit the record with appropriate report and recommendation through the Commissioner of Indian Affairs.\*† [Sec. 4]

**256.5 Application for right-of-way.** In due course, after a survey has been authorized and completed, formal application for the desired right-of-way may be made. Such application should be in duplicate, addressed to the Secretary of the Interior, and filed with the Superintendent or other officer in charge of the Indian lands involved, except where hereinafter otherwise directed. Upon receipt of the application the Superintendent will note thereon the date of filing and promptly forward one part to the Commissioner of Indian Affairs, retaining the other part for use in preparing his final report.\*† [Sec. 5]

**256.6 Maps.** Each application for a right-of-way must be accompanied by a map of definite location, on tracing linen and by field notes of the survey, in duplicate, and two blue-prints copies of the map.

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

The scale of maps showing the line of route should be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when necessary, but the scale must not be so greatly increased as to make the map inconveniently large for handling. In most cases, by furnishing separate field notes, an increase of scale can be avoided.\*† [Secs. 6, 7, 8]

**256.7 Field notes.** Field notes of the survey should be written along the line on the map. If the map would thereby be too much crowded to be easily read, then duplicate field notes should be filed separate from the map, and in such form that they may be folded

\*†For statutory and source citations, see note to § 256.1.

for filing. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes.

Typewritten field notes, with clear carbon copies, are preferred whenever separate field notes are necessary, as they expedite the examination of applications. The field notes, whether given on the map or filed separately, must be so complete that the line may be retraced from them on the ground. They should show whether lines were 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.\*† [Secs. 9, 10]

**256.8 Public survey.** The termini of the line of route should be fixed by reference of course and distance to the nearest existing corner of the public survey. The map, engineer's affidavit, and president's certificate (Forms 3 and 4)<sup>5</sup> should each show these connections.

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 president's certificate (Forms 3 and 4).<sup>5</sup> The notes and all data for the computation of the traverse must be given.\*† [Secs. 11, 12]

**256.9 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 of the traverse, as required above. The engineer's affidavit and president's certificate (Forms 3 and 4)<sup>5</sup> must state the connections. These monuments are of great importance.\*† [Sec. 13]

**256.10 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 should be ascertained and noted. The map or plat should show these distances and the station numbers at the points of intersection. When field notes are submitted, they should also contain these distances and station numbers.\*† [Sec. 14]

**256.11 Affidavit and certificate.** The engineer's affidavit and president's certificate must be written on the map, and must both designate by termini and length, in miles and decimals, the line of route for which right-of-way application is made (Forms 3 and 4).<sup>5</sup> No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein.\*† [Sec. 15]

**256.12 Financial ability of applicant.** Each map of location must be accompanied by statement of the individual applicant or of

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<sup>5</sup> See footnote on page 27.

the president or other principal officer of a company, defining the purpose, intent, and financial ability of the applicant in the matter of the construction of the project covered by the map.\*† [Sec. 16]

#### RAILROADS

**256.13 Railroad spurs and branch lines.** Where right-of-way is desired for railroad spurs or short branch lines which will not greatly enlarge the size of the map, they may be shown on the same map with the main line, and should be separately described in the forms by termini and length. For longer lines separate maps should be filed. Grounds desired for station purposes may be indicated on the map of location of the road, but separate plats of such grounds must be filed and approved.\*† [Sec. 17]

**256.14 Intersecting railroads.** Railroad maps should show any other line crossed, or with which connection is made, and, whenever possible, the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which the applicant asks right-of-way.\*† [Sec. 18]

**256.15 Railroad station grounds.** Plats of railroad station grounds should be drawn on a scale of 400 feet to an inch, and must be filed separately from the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto, and each station ground tract must be described and referenced as provided in § 256.8, except when on surveyed land, in which case the smallest legal subdivision in which the station ground tract is located, or to which it conforms, should be stated.\*† [Sec. 19]

**256.16 Application.** Applications for railroad rights-of-way and grounds for station purposes, etc., should be made under the Act of March 2, 1899 (30 Stat. 990; 25 U.S.C. 312), as amended by that of June 21, 1906 (34 Stat. 330; 25 U.S.C. 313), and section 16 of the Act of June 25, 1910 (36 Stat. 859; 25 U.S.C. 312). By section 6 of the Act of March 2, 1899 (30 Stat. 992; 25 U.S.C. 316), applicants thereunder are required to conform to the provisions of section 2 of the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 935).† (Sec. 7, 30 Stat. 992; 25 U.S.C. 317) [Sec. 20]

**256.17 Parallel lines.** If any proposed railroad be parallel to, and within 10 miles of, one already built or in course of construction, it must be shown wherein the public interests 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.† (Sec. 7, 30 Stat. 992; 25 U.S.C. 317) [Sec. 21]

**256.18 Certificate.** The company must certify (Form 1)<sup>5</sup> that the road is to be operated as a common carrier of passengers and freight.† (Sec. 7, 30 Stat. 992; 25 U.S.C. 317) [Sec. 22]

**256.19 Stipulation.** The applicant must execute and file, in duplicate, a stipulation (Form 9)<sup>5</sup> regarding the prevention and ex-

<sup>5</sup> See footnote on page 27.

\*†For statutory and source citations, see note to § 256.1.

termination of forest fires, the construction and maintenance of passenger and freight stations for each Government town site, and the crossing of the right-of-way with canals, ditches, and other projects.† (Sec. 7, 30 Stat. 992; 25 U.S.C. 317) [Sec. 23]

#### BALLAST OR MATERIAL PITS

**256.20 Application.** Railroad companies desiring to acquire Indian land for ballast or material pits, reservoirs, or for tree planting to aid in the construction or maintenance of railroads, should make application therefor under the Act of March 3, 1909, if tribal lands are involved, and under this Act as amended by that of May 6, 1910, if allotted lands are affected.† (35 Stat. 781, 36 Stat. 349; 25 U.S.C. 320) [Sec. 24]

**256.21 Procedure.** The application should be filed with and acted upon by the Superintendent or other officer in charge in conformity with the general regulations herein prescribed. It should cite the act under which the railroad right-of-way was acquired and the date of the grant, and be accompanied by the stipulation set out in § 256.19, with the additional provision that upon abandonment or failure to use the land for the authorized purpose for a continuous period of 2 years, all rights of the company shall thereupon terminate.† (35 Stat. 781, 36 Stat. 349; 25 U.S.C. 320) [Sec. 25]

#### RAILROADS IN OKLAHOMA

**256.22 Maps.** The Act of March 2, 1899 (30 Stat. 990; 25 U.S.C. 312-318), was repealed as to Indian lands in Oklahoma by that of February 28, 1902 (Sec. 23, 32 Stat. 50), under which no application to the Secretary of the Interior is necessary, the only requirement, so far as this department is concerned, being the filing here of correct maps of any line of railroad proposed or any lands to be taken. Such maps must also be filed with the Superintendent or other officer in charge of the lands involved and with the principal chief or governor of any tribe or nation through which the lines of railroad may be located or in which said lines are situated.\*† [Sec. 26]

**256.23 Compensation and damages.** Before any railroad shall be constructed or any lands taken or condemned for any of the purposes set forth in section 14 of the Act of February 28, 1902 (32 Stat. 47), full compensation for such right-of-way and all land taken and all damage done or to be done by the construction of the railroad, or the taking of any lands for railroad purposes, shall be made to the Indian owners, occupants, or allottees of such lands.\*† [Sec. 27]

**256.24 Negotiation with Indians.** After the filing of maps, as required by § 256.22, the matter of compensation and damages may be taken up directly with the Indians. In the event an amicable settlement with the Indians can not be reached, the amount to be paid them shall be fixed and determined through the courts, as provided in section 15 of the Act of February 28, 1902 (32 Stat. 47).\*† [Sec. 28]

**256.25 Advice to Indians.** While no authority to approve or disapprove any proceedings under the Act of February 28, 1902 (32

Stat. 43), is vested in the Department, under and by virtue of the general supervisory authority over Indian affairs conferred upon the Secretary of the Interior by sections 441 and 463 of the Revised Statutes (5 U.S.C. 85, 25 U.S.C. 2), the Superintendent or other officer in charge of the Indian lands involved is hereby charged with the duty of counseling and advising the Indians as to the amount which in his opinion they should receive as compensation and damages for the desired lands or right-of-way. In the events that any settlement is arranged which in his opinion does not fairly compensate the Indians, or if court proceedings are instituted, the Superintendent will promptly report all the facts through the Commissioner of Indian Affairs, so that appropriate action to safeguard the interests of the Indians may be taken.\*† [Sec. 29]

## OIL OR GAS PIPE LINES

**256.26 Application.** Applications for oil or gas pipe line rights-of-way and pumping station or tank sites should be made to the Secretary of the Interior under the Act of March 11, 1904 (33 Stat. 65), as amended by that of March 2, 1917 (39 Stat. 973; 25 U.S.C. 321).† [Sec. 30, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.27 Temporary permission.** The Superintendent is hereby authorized, in his discretion, to grant temporary permission for the construction of oil or gas pipe lines, provided the applicant has deposited with him twice the amount of the estimated damages and filed a written agreement to comply promptly with the applicable laws and regulations. A copy of each such permit should be promptly forwarded to the Commissioner of Indian Affairs, to be filed with the record in the case. Deposits made hereunder shall be carried as "Special Deposits" until the receipt of instructions as to disposal.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 31, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.28 Size and type of line.** The size of the proposed pipe line must be shown in the application; on the map; and in the engineer's affidavit and the president's certificate (Forms 3 and 4).<sup>5</sup> The application and map should also specify whether the pipe is welded, screw-joint, dresser, or other type of coupling.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 32, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.29 Pumping stations or tank sites.** Where additional right of way is desired for pumping stations or tank sites, application therefor should be made in like manner, accompanied by maps showing the right-of-way, with connecting line to the main pipe line. Application for such additional right-of-way may be either submitted separately or incorporated in that for the main line, and, in addition to the other papers specified by the regulations in this part, it must be accompanied by a properly executed stipulation, embodying the following provisions:

(a) To lay all connecting pipes at a sufficient depth below the surface as not to interfere with the cultivation of the land. Upon

<sup>5</sup> See footnote on page 27.

\*†For statutory and source citations, see note to § 256.1.

abandonment of the premises to level all dikes, fireguards, and excavations and to remove all concrete masonry foundations, bases, and structural works so that the ground will be as nearly as practicable in the same condition as before its use for the pump station or tank site.

(b) The use of the surface for such purposes shall not interfere with the allottee's right to remove any oil or gas deposits, and the pump station or tank site grant shall always be subservient to an oil or gas lease on the land.

(c) The structures shall be erected in accordance with regulations prescribed by the Secretary of the Interior, and subject to inspection and approval by his representative after completion.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 33, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.30 Damages.** Damages shall be assessed in each case so as to fully compensate the Indians, and schedules submitted to the Secretary of the Interior for approval in accordance with §§ 256.75–256.88. When any subsequent damage is done by reason of the bursting of a pipe or tank or by the entry of the pipe line or tank owner or any of his employees upon the land, they shall be assessed and paid in like manner. Prior to approval of the right-of-way, the applicant must submit a written agreement to pay any such latter damages within 10 days after demand therefor, upon penalty of forfeiture of the grant.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 34, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.31 Pipe lines to be buried.** All pipe lines shall be buried a sufficient depth under the surface as not to interfere with the cultivation of the land above, and at the risk of the company. Should it be desired at any time to lay additional lines of pipe in the same trench, or to replace the original line by larger or smaller pipe, permission therefor must be first obtained from the Secretary of the Interior and payment made of any damages sustained by the Indian owners, in the same manner as for the original line. Any right-of-way granted hereunder is subject to the right of the full use and enjoyment of the premises by the tribe, allottee, or occupant, except as otherwise provided by law or the regulations in this part.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 35, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.32 Damages for cultivation waived.** Any applicant obtaining a right-of-way for an oil or gas pipe line hereunder does so with the understanding that he waives all claims for damages of whatever nature to any of the pipes or lines arising from the cultivation of the surface in the usual manner.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 36, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.33 Pipe line under highway.** Where a pipe or pipe line is laid under a traveled road or highway, its construction shall be in compliance with the applicable State laws; during the work at least one-half the width of the road must be kept open to travel; and, upon completion, the highway shall be restored to its original condition, any excavation to be refilled whenever, by settling or other

causes, the necessity therefor may arise.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 37, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.34 Pipe line across ravine, canyon, or waterway.** Whenever any such pipe crosses a ravine, canyon, or waterway, it may be laid either below the bed thereof or upon such a superstructure as will not interfere with the use of the surface.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 38, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.35 State taxation.** Where any pipe line constructed hereunder is not subject to State taxation, the company shall pay to the Secretary of the Interior, for the use and benefit of the Indians, an annual tax, not exceeding \$5 for each 10 miles of line, under such rules and regulations as he may prescribe. But nothing herein contained shall be so construed as to exempt the owner of such a line from the payment of any tax lawfully imposed upon him by either State or municipal authority, nor to deny to any incorporated city or town into or through which the line may extend, the right to regulate the manner of construction.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 39, Regs., as amended Apr. 7, 1938, 3 F.R. 984]

**256.36 Lateral lines.** In accordance with the Acts cited, lateral lines connecting with oil or gas wells on individual allotments may be constructed without securing authority from the Secretary of the Interior, when the consent of the Indian owners has been obtained and satisfactory evidence thereof filed with the Superintendent. 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 restricted allotment to another lateral or to a branch of the main line. The owner of the line may either independently undertake to obtain the consent of the Indian owners or negotiate therefor through the Superintendent, as preferred. The consent of the allottee for the construction of a lateral must be executed in triplicate, with a blue print copy of map showing the line attached; and should be specifically limited to 20 years. The original should be given to the company and the duplicate to the allottee, and the triplicate filed at the agency.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 39½, Regs., as added Apr. 7, 1938, 3 F.R. 984]

**256.37 Grants not to exceed 20 years.** The Acts cited in § 256.26 limit oil and gas pipe line rights-of-way thereunder to a period of not to exceed 20 years, with the proviso that the Secretary of the Interior may grant an extension for a like term. If such an extension is desired for either a main line or a lateral, application therefor, accompanied by the necessary maps, etc., should be filed at the local agency at least 60 days before the original grant expires. The Superintendent will assess and collect adequate damages, which should not be less than 25 cents per rod, and forward a schedule thereof to the Commissioner of Indian Affairs, with the application, the consent of the allottees, and his recommendation in the premises. The Superintendent should keep a record of expirations, in order to see that applications for desired extensions are submitted within the 60-day period.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 39½, Regs., as added Apr. 7, 1938, 3 F.R. 984]

†For source citation, see note to § 256.1.

**256.38 Inspection of records.** The books and records of pipeline operators shall be open to the inspection of the Secretary of the Interior, or his duly accredited representatives at all reasonable times, in order to obtain information which pertains in any way to oil produced or run from lands under the jurisdiction of the Secretary of the Interior.† (33 Stat. 65, 39 Stat. 973; 25 U.S.C. 321) [Sec. 39¾, Regs., as added Apr. 7, 1938, 3 F.R. 985]

#### TELEGRAPH AND TELEPHONE LINES

**256.39 Application.** Application for rights-of-way for telephone or telegraph lines across Indian lands may be made under section 3 of the Act of March 3, 1901 (31 Stat. 1083, 25 U.S.C. 319), and if so made should conform to the general requirements herein set forth. Whenever grounds are required for office purposes, a map thereof, in duplicate, drawn on tracing linen, to a scale of 50 feet to an inch must be filed separately from the line of route. Such maps should show enough of the line of route to indicate the position of the tract desired for office purposes with reference thereto and the location of such tract should be referenced on the maps by course and distance to the nearest existing corner of the public survey.† (Sec. 3, 31 Stat. 1083; 25 U.S.C. 319) [Sec. 40]

**256.40 Handled through General Land Office.** If preferred, applicants for rights-of-way for telephone or telegraph lines over Indian lands may proceed either under the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), or that of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961). These Acts are administered through the General Land Office, and for the sake of uniformity of procedure applications thereunder involving Indian lands shall be filed in the local land office in accordance with separate regulations promulgated through that bureau.\*† [Sec. 41]

CROSS REFERENCE: For applicable regulations of the General Land Office, see 43 CFR Part 244.

**256.41 Procedure.** Upon the filing of such an application in the local land office, the register or other officer in charge, after appropriate notation, will forward it to the General Land Office, which will, in turn, transmit to the Commissioner of Indian Affairs, with a request for his report, two copies of the application, or so much thereof as he may deem necessary for the purpose. No such application shall be presented to the Secretary of the Interior for approval unless accompanied by a statement of the views of the Commissioner of Indian Affairs.\*† (31 Stat. 790, 36 Stat. 1253; 43 U.S.C. 959, 961) [Sec. 42]

CROSS REFERENCE: For applicable regulations of the General Land Office, see 43 CFR Part 244.

#### POWER PROJECTS

**256.42 Allotted lands.** Applications covering power projects affecting allotted Indian lands should be addressed to the Secretary of the Interior and filed in the local land office under the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), or that of Mar. 4, 1911 (36 Stat. 1253; 43 U.S.C. 961), and handled administra-

tively as in the case of telephone and telegraph lines (§§ 256.40, 256.41).\* [Sec. 43, Regs., as amended Apr. 7, 1938, 3 F.R. 985]

CROSS REFERENCE: For applicable regulations of the General Land Office, see 43 CFR Part 244.

**256.43 Tribal lands.** Power projects which affect tribal Indian lands should be handled as provided in §§ 256.40, 256.41 except where the power is generated by hydroplants, for which a separate application must be filed with the Federal Power Commission under the Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213, inclusive, of the Act of August 26, 1935 (49 Stat. 838-847; 16 U.S.C. 791-825r and Sup.), and regulations issued by the Commission pursuant thereto.\* (31 Stat. 790; 43 U.S.C. 959) [Sec. 43<sup>1</sup>/<sub>4</sub>, Regs., as added Apr. 7, 1938, 3 F.R. 985]

CROSS REFERENCE: For applicable regulations of the Federal Power Commission, see 18 CFR Part 11.

**256.44 Consent of organized tribe necessary.** The consent of any tribe organized under the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), is required by section 10 (e) of the Federal Water Power Act, as amended by section 206 of the Act of August 26, 1935 (49 Stat. 843; 16 U.S.C., Sup., 803), before a license can be issued covering a water-power project on tribal lands.\* (Sec. 16, 48 Stat. 987; 25 U.S.C. 476) [Sec. 43<sup>1</sup>/<sub>2</sub>, Regs., May 22, 1928, as added Apr. 7, 1938, 3 F.R. 985]

CROSS REFERENCE: For applicable regulations of the Federal Power Commission, see 18 CFR Part 11.

#### IRRIGATION PROJECTS

**256.45 Procedure.** Except as hereinafter provided, applicants for rights of way or easements for irrigation canals or ditches, flumes, reservoirs, etc., should proceed under sections 17 to 21, inclusive, of the Act of March 3, 1891 (26 Stat. 1101; 43 U.S.C. 946-949), as amended, and separate regulations promulgated thereunder through the General Land Office. Administrative action on such applications after their receipt in the local land office shall be taken as set forth in §§ 256.40, 256.41.\*† [Sec. 44]

CROSS REFERENCE: For applicable regulations of the General Land Office, see 43 CFR Part 244.

**256.46 Southern Ute Reservation, Colorado.** Applications covering irrigation ditches involving Southern Ute Indian lands in Colorado should be filed with the Superintendent or other officer in charge under the Act of May 27, 1902 (32 Stat. 266), and conform to the general requirements of the regulations in this part.\*† [Sec. 45]

**256.47 Uintah Reservation, Utah.** The Act of March 1, 1899 (30 Stat. 941), authorizes the Secretary of the Interior, in his discretion, to grant rights of way for the construction and maintenance of dams, ditches, and canals in or through the Uintah Indian Reservation in Utah for the purpose of diverting and appropriating water for useful purposes. The Act of June 21, 1906 (34 Stat. 375), provides that ditches and canals of systems to irrigate the allotted lands of the Uncompahgre, Uintah, and Whiteriver Utes, in Utah, may be

\*†For statutory and source citations, see note to § 256.1.

used, extended, or enlarged. Application to secure the benefits of these acts must be filed with the superintendent or other officer in charge and should conform to the general requirements of the regulations.\*† [Sec. 46]

**256.48 Crow Reservation, Montana.** Right-of-way and water-right applications affecting lands within the diminished Crow Reservation for the purpose of irrigating lands on the ceded part, should be filed with the Superintendent or other officer in charge under the Act of April 27, 1904, and conform to the general requirements of the regulations in this part.† (Sec. 1, Art. VIII, 33 Stat. 359) [Sec. 47]

**256.49 Water projects other than irrigation or power.** Applications covering projects which involve the transportation and use of water for beneficial purposes other than irrigation or power development, should be filed in the local land office under the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959), as set out in §§ 256.40, 256.41.\*† [Sec. 48]

#### PUBLIC HIGHWAYS

**256.50 Permission to open.** Except where the Indian lands involved are situated in Nebraska or Montana, the Secretary of the Interior is authorized by Section 4 of the Act of March 3, 1901, to grant permission to the proper State or local authorities to open public highways in accordance with the State laws.\*† (31 Stat. 1084; 25 U.S.C. 311) [Sec. 49]

**256.51 Application.** To secure such permission, application must be filed through the superintendent, or other officer in charge, accompanied by map drawn in accordance with the general requirements of the regulations in this part and all the information called for by Form 5-104.<sup>36</sup>\*† (31 Stat. 1084; 25 U.S.C. 311) [Sec. 50]

**256.52 Should follow section lines.** Where the lands traversed have been surveyed, the proposed road or highway must follow section or allotment lines as far as practicable, and satisfactory showing must be made for any departure therefrom.\*† (31 Stat. 1084; 25 U.S.C. 311) [Sec. 51]

**256.53 Damages.** Damages shall be assessed in each case so as to compensate fully the Indians, and schedules prepared and submitted to the Secretary of the Interior for approval in accordance with the general instructions given in §§ 256.75-256.88. However, in making the appraisal the Superintendent or other officer in charge will keep in mind the public nature of the project and make due allowance for the benefits which will result to the owners. These benefits should be pointed out to the Indians when the matter is taken up with them, and where no actual damages will result or the benefits equal or exceed them, the Indians should be counseled to give their consent without compensation. Forms<sup>5</sup> for the use of the Su-

<sup>5</sup> See footnote on page 27.

<sup>36</sup> See footnote on page 438.

perintendent in making his report and securing statements from the Indians are designated 5-104a, 5-104b.\*† (31 Stat. 1084; 25 U.S.C. 311) [Sec. 52]

**CROSS REFERENCE:** For construction and maintenance of Government roads on Indian lands, see Part 261.

**256.54 Highways in territory of Five Civilized Tribes.** The Acts cited below authorize section-line highways of the prescribed width in the territory of the Five Civilized Tribes, Oklahoma, as follows:

Nation	Width (rods)	Act	Reference
Creek.....	3	Sec. 10, June 30, 1902.....	32 Stat. 502.
Cherokee.....	2	Sec. 37, July 11, 1902.....	32 Stat. 722.
Choctaw.....	} 2	Sec. 24, Apr. 26, 1906.....	34 Stat. 145.
Chickasaw.....			
Seminole.....			

In such cases it is only necessary for the State or county to file with the Secretary of the Interior a map, drawn on tracing cloth, with two blue print copies, showing the location of the road. Wider section-line highways and those off the line, regardless of width, will be handled through the medium of easement deeds executed by the allottees or their heirs and approved by the Secretary of the Interior. Deeds of minors should be executed by the legal guardian in each case, and have attached thereto copies of the guardian's appointment and of the order of the court specifically authorizing him to execute the deed subject to approval by the Secretary of the Interior. Upon receipt of the approved deed, the Superintendent should have attached thereto before delivery a copy of the Court's order confirming the sale, and send a copy of the order to the Commissioner of Indian Affairs.\* [Sec. 52½, Regs., as added Apr. 7, 1938, 3 F.R. 985]

**CROSS REFERENCE:** For construction and maintenance of Government roads on Indian lands, see Part 261.

#### HIGHWAYS IN MONTANA AND NEBRASKA

**256.55 Approval by Secretary of the Interior not necessary.** The opening of public highways over Indian lands in Montana and Nebraska in accordance with the respective State laws, is authorized by the Act of March 4, 1915. No action by the Secretary of the Interior is required, but the Act provides that notice of any such proposed road must be given to the Superintendent or other officer in charge of the lands, and that before the road is laid out a map, drawn on tracing linen, showing its definite location and width must be filed with, and approved by, the Superintendent.\*† (38 Stat. 1188) [Sec. 53]

**256.56 Superintendent may approve map.** When a map is filed under the provisions of § 256.55 the Superintendent or other officer in charge has full authority to approve same in his discretion, but

\*†For statutory and source citations, see note to § 256.1.

such officer will be expected before approving any map so filed to view the road location or otherwise satisfy himself that the road is a public necessity and is laid out where it will do the least damage to the property of the Indians, provided such a course is feasible and practicable from a construction viewpoint. No map showing a highway location detrimental to the best interests of the Indians or which will damage them beyond compensation should be approved.\*† (38 Stat. 1188) [Sec. 54]

**256.57 Maps.** The original part of maps approved under the preceding section shall be filed in the superintendent's office; and the other parts, if any, with approval noted thereon, returned to the applicants.\*† (38 Stat. 1188) [Sec. 55]

**CROSS REFERENCE:** For construction and maintenance of Government roads on Indian lands, see Part 261.

**256.58 Highways in roadless and wild areas.** Whenever a public highway right of way is desired within any of the roadless or wild areas on Indian reservations established by the order of the Secretary of the Interior dated October 29, 1937, the application must contain a specific statement to this effect, with a full justification therefor; the accompanying map of definite location must clearly indicate the area involved; and the Superintendent's report must fully explain the necessity for the road, and whether or not he recommends approval of the application on the basis of the policy enunciated in the order cited. Where the proposed road will be on a reservation having such an area, but the road is not to be located therein, the Superintendent's report must contain a specific statement to this effect.\* [Sec. 55½, Right-of-way Regs., as added Apr. 7, 1938, 3 F.R. 985]

**CROSS REFERENCE:** For provisions of the order of Oct. 29, 1937 pertaining to roadless areas, see Part 281.

#### DRAINAGE PROJECTS

**256.59 Application and map.** There is no general law authorizing the granting of drainage rights of way over Indian lands except allotted lands in Oklahoma. Under the Acts of July 19, 1912 (37 Stat. 194) and the Act of March 27, 1914 (38 Stat. 310), as amended by the Act of March 2, 1921 (41 Stat. 1204), applications for drainage rights-of-way and the approval of drainage assessments on Indian lands in said state shall be addressed to the Secretary of the Interior, signed by the commissioners of the county in which the drainage district is located, and attested by the county clerk. If the drainage district is in more than one county, the application shall be signed by the officers of all such counties. The application shall show that all the laws of the State of Oklahoma regarding the drainage of lands have been complied with and that where such laws provide for the service of notice upon the landowners, such notice as to the allotted Indian lands held under restrictions has been served upon the Superintendent or other officer of the Indian Service having jurisdiction over such lands.

Each application must be accompanied by—

(a) A map in duplicate drawn on tracing linen showing the definite location of the proposed drainage ditch or ditches and all lands

intended to be drained thereby. Such map shall also show the definite location of the Indian allotments involved, with the names and numbers of the allottees. The map must also bear an affidavit by the engineer and a certificate of the drainage or county commissioners (Forms 10 and 11).<sup>5</sup> As to scale, field notes, and other required data, see the general provisions of the regulations (§§ 256.1–256.12).

(b) A certified copy of the report of the viewers, including the schedule of assessments and damages as fixed by them.† (Sec. 4, 37 Stat. 195) [Sec. 56]

**256.60 Appraisal and schedule.** The application and accompanying papers shall be filed with the Superintendent or other officer of the Indian Service in charge of the Indian lands, who shall prepare a separate schedule similar to that made by the viewers, which separate schedule shall cover only the restricted Indian allotments involved and show by columns the name of the allottee, the allotment number, description of the land by smallest legal subdivisions, acreage of each legal subdivision, the net acreage of each legal subdivision liable for assessment, the rate per acre of assessment, the class in which placed by the viewers, total assessment per each legal subdivision, number of acres in canal right-of-way, assessed damages therefor, and acreage in railroad or other rights-of-way. Pending the preparation of such separate schedule, the Superintendent or officer in charge will submit a preliminary report to the Commissioner of Indian Affairs, stating that the application has been filed and giving a description of the project, with his opinion as to feasibility and necessity so far as the Indians in interest are concerned; also giving the name of any employee under his supervision who has a knowledge of the subject of drainage and is qualified to determine the feasibility of the project and whether the assessment of benefits and damages has been equitably and fairly made. If the facts reported warrant such action, some qualified person will be designated to act with the Superintendent or other officer in charge for the purpose of determining these points, and their findings and recommendation should be embodied in a joint report, appended to the schedule prepared by the Superintendent.† (Sec. 4, 37 Stat. 195) [Sec. 57]

**256.61 Superintendent's report.** When completed as required by § 256.60, the schedule, together with the application, map, and accompanying papers, should be forwarded by the Superintendent, with his report and recommendation, to the Commissioner of Indian Affairs for further appropriate action.† (Sec. 4, 37 Stat. 195) [Sec. 58]

**256.62 Authority for construction.** If the application and map are approved, authority will be granted for the applicant to proceed with the construction of the ditch.† (Sec. 4, 37 Stat. 195) [Sec. 59]

**256.63 Assessments.** It is to be distinctly understood that the approval of any assessment, except where the allotments involved

<sup>5</sup> See footnote on page 27.

†For source citation, see note to § 256.1.

are of the Five Civilized Tribes, is not to be taken as an indication that the department will assist in the collection of such assessment, and also that the provisions in the third paragraph of section 3 of the Act of July 19, 1912 (37 Stat. 195), that unpaid assessments shall become a first lien on the allotments, are not applicable to projects approved by the Secretary of the Interior under the general provisions of the Act.† (Sec. 4, 37 Stat. 195) [Sec. 60]

**256.64 Authority to pay.** Upon completion of any authorized project involving allotments of the Five Civilized Tribes, the Superintendent or other officer in charge will report whether the Indian lands are being satisfactorily drained; if so, such officer will be authorized to pay the approved assessment in each case out of the pro-rata share of each respective allottee in any funds or moneys arising from any source under such officer's control or under the control of the United States.† (Sec. 4, 37 Stat. 195) [Sec. 61]

**256.65 Consent of allottees.** In every case where the Superintendent is of opinion that the assessments should be paid and funds therefor are available, the matter should be taken up with and fully explained to each Indian owner, and every effort made to procure his or her written consent to such payment. Such consents or a full statement in lieu thereof should be submitted when authority to make payment is requested.† (Sec. 4, 37 Stat. 195) [Sec. 62]

#### LOGGING ROADS

**256.66 Revocable permits.** Revocable permission may be given by the Secretary of the Interior to construct and operate logging roads across Indian lands under the general supervisory authority over Indian affairs conferred upon him by R.S. 441, 463 (5 U.S.C. 485, 25 U.S.C. 2) upon such terms and conditions as he may deem fair and adequate under the circumstances of each particular case.\*† [Sec. 63]

**256.67 Prior approval necessary.** No timber contractor shall be permitted to lay out and construct any logging road without having previously submitted a statement of the proposed location to the Superintendent or other officer in charge of the Indian lands involved and received the approval of the forest officer and the Superintendent as to such proposed location, and the approval of the Commissioner of Indian Affairs as to the location of any main line logging railroad.\*† [Sec. 64]

CROSS REFERENCE: For general forest regulations, see Part 61.

**256.68 Application and map.** Before the construction of any main-line logging road is undertaken, formal application accompanied by tracing map in duplicate, must be filed through the superintendent and approved by the Commissioner of Indian Affairs. Short branches of logging roads of a temporary nature may be constructed with the approval of the Superintendent and the forest officer without reference to the Commissioner of Indian Affairs. However, the location of such branches or spurs should be indicated on small maps or plats which will be forwarded through the Superintendent for filing in the Office of Indian Affairs.\*† [Sec. 65]

**256.69 Schedule of damages.** In forwarding logging road applications, the Superintendent shall attach thereto a schedule of damages prepared in accordance with §§ 256.75–256.86 regarding the appraisal of right-of-way damages.\*† [Sec. 66]

**256.70 Miscellaneous rights-of-way.** Where a right-of-way is desired for any purpose not covered herein, the Superintendent should submit full details to the Commissioner of Indian Affairs for instructions as to procedure.\* [Sec. 67, Regs., as amended Apr. 7, 1938, 3 F.R. 985]

#### CONDEMNATION OF ALLOTTED LANDS

**256.71 Authority.** The condemnation of allotted Indian lands for any public purpose in accordance with the laws of the State wherein the lands are situated is authorized by the last paragraph of section 3 of the Act of March 3, 1901.\*† (31 Stat. 1084; 25 U.S.C. 357) [Sec. 68]

**256.72 Public purpose.** Any project for which private lands may be condemned under the State law is held to be a public purpose within the meaning of the Act of March 3, 1901 (31 Stat. 1083, 1084).\*† [Sec. 69]

**256.73 Suit must be brought in Federal Court.** As the holder of the legal title to allotted Indian lands held in trust, the United States must be made a party to all such condemnation suits and the action must be brought in the appropriate Federal District Court, the procedure, however, to follow the provisions of the State law on the subject, so far as applicable.\* [Sec. 69½, Regs., as added Apr. 7, 1938, 3 F.R. 985]

**256.74 Duty of Superintendent.** The Superintendent or other officer in charge is expected to keep in close touch with matters affecting the interests of the Indians within his jurisdiction and to report immediately through the Commissioner of Indian Affairs when any condemnation proceedings are instituted. All information available regarding such proceedings, particularly a description of the lands involved, should be given so that the Department of Justice may be requested to enter an appearance in such proceedings in behalf of the owners and to take such other action for their protection as may be warranted by the law and the facts\*† [Sec. 70]

#### COMPENSATION AND DAMAGES

**256.75 Direct payments to the Indians prohibited.** Except as provided in § 256.24, no applicant should independently attempt to negotiate for a right-of-way with or pay any money therefor direct to any tribe of Indians or the owner of any restricted allotment. Credit for payments made in disregard of this section will not be given.\*† [Sec. 71]

**256.76 Appraisal officers.** The Superintendent or other officer in charge of the Indian lands involved is hereby designated as the proper person to appraise the value of the lands to be taken and the damage which will result therefrom, which appraisal shall be subject to the approval of the Secretary of the Interior. Where it is deemed

\*†For statutory and source citations, see note to § 256.1.

advisable for the appraising officer to have the assistance of an expert in the technical features of any project, a supervising engineer or other qualified employee may be specially detailed for that purpose.\*† [Sec. 72]

**256.77 Water rights.** In any case involving or affecting the water rights of the Indians, where no special detail is made, as provided for in § 256.76, the appraisal report of the Superintendent should be forwarded to the Commissioner of Indian Affairs through the supervising engineer for the district in which the lands are situated, and it shall be the duty of such supervising engineer to forward same promptly, with a full statement of his views regarding the adequacy of the appraisal and setting forth what conditions, if any, in addition to those recommended by the Superintendent, should be imposed upon the applicant in order properly to safeguard the water rights of the Indians.\*† [Sec. 73]

**256.78 Mineral and power value of lands.** Approval will not be given to any railroad project involving Indian lands underlaid with coal or other valuable minerals unless the applicant makes payment of the estimated value of such deposits; and no project of any kind involving tribal lands valuable for power development will be approved unless it be satisfactorily shown that the value or use of the lands for such purpose will not be materially diminished or interfered with, or unless the project covered by the application is relocated so as to avoid interference with power development. To the end that this provision may be carried out, no such application shall be presented to the Secretary of the Interior for final action unless accompanied by report of the Geological Survey regarding the mineral and power value of the lands involved.\*† [Sec. 74]

**256.79 Irrigable lands.** Whenever application is made covering a project involving the use of irrigable Indian lands within an authorized or constructed irrigation project, the assessment of damages made in accordance with §§ 256.75–256.88 shall include as a separate item the prorated per acre construction and betterment charge laid against the lands by reason of such irrigation project, the amount so paid to be credited to the fund or appropriation from which the irrigation project was constructed. If such charge has not been fixed or determined, the applicant shall be required to make deposit of the estimated amount thereof as a guarantee that it will comply herewith. Such deposit shall be taken up by the superintendent or other officer in charge as a “special deposit” and so carried until otherwise directed.\*† [Sec. 75]

**256.80 Schedules.** Unless there are good reasons to the contrary, in which event immediate report should be made to the Commissioner of Indian Affairs, the Superintendent will, upon receipt of a right-of-way application (or of a copy thereof where the filing of the original is required to be made in the local land office or the Federal Power Commission), promptly proceed with the preparation of two schedules, each in quadruplicate, one covering the tribal and the other the allotted lands involved. The allotted-land schedule, in addition to listing the lands, should show the name and number of each allottee.

Blank columns should be provided in each schedule for the insertion when ascertained, of the acreage taken from each subdivision, the value per acre; the damage to improvements, adjoining land, or other property; and the total of these items.\*† [Sec. 76]

**256.81 Expenses.** While schedules are being prepared in accordance with § 256.80, the Superintendent, will, except in the case of public highways or other Government projects to which this section shall not apply, estimate the cost of expense of the necessary field inspection and other work required in making appraisal of damages, which estimate shall include actual subsistence, traveling expenses, and per diem, if any, of the employee doing the field work. The applicant will then be called upon to make deposit with the Superintendent of such estimated amount, which shall be immediately available for the payment of such expenses.\*† [Sec. 77]

**256.82 Appraisal of damages.** On receipt of the deposit required by § 256.81 the Superintendent shall go over the project and appraise the value of the land taken and damage done, which data should be inserted in the schedules. Section 10 (e) (41 Stat. 1069, 49 Stat. 843; 16 U.S.C. 803 (e) and Sup.) of the Federal Water Power Act provides that when licenses are issued involving the use of tribal Indian lands the commission shall fix a reasonable charge for the use thereof, and that such charges may be readjusted at the end of 20 years after the beginning of operations and at periods of not less than 10 years thereafter in a manner to be described in each license. So far as transmission lines are concerned, the commission has fixed \$5 per annum per mile as the charge to be exacted. On other projects the annual charge usually fixed by the commission is 6 percent of the fair valuation of the lands involved. Unless good reasons exist for using higher rates, in which event the facts should be fully set out in the Superintendent's report accompanying the schedule, appraisals made hereunder covering power projects should conform to the rates fixed by the Federal Power Commission. Appraisals for oil or gas pipe lines should not be less than 25 cents per rod; and for telephone or telegraph lines, not less than 10 cents per pole. Whatever rate is used, the total for any allottee should not be less than \$1. Except for power projects on tribal lands, all appraisals shall be made on a lump-sum basis.\*† [Sec. 78]

**256.83 Consent of allottees or tribe.** At the time of making the appraisal, or upon its completion, the question of compensation and damages should be taken up with and thoroughly explained to the individual Indians, and, if they are agreeable, their written acceptance of the awards made by the Superintendent, either by affixing their signatures to the schedule (Form 12)<sup>5</sup> or by separate statements (Form 5-104b)<sup>5</sup> should be procured. Should any Indian object to the amount and demand a greater payment, if such demand is considered reasonable by the Superintendent he should revise his appraisal accordingly; otherwise, the written statement of the Indian should be forwarded with the schedule (Form 12)<sup>4</sup> and a full report

<sup>5</sup> See footnote on page 27.

\*†For statutory and source citations, see note to § 256.1.

of the Superintendent's views. Where tribal lands are involved, belonging to a tribe which is organized under the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476), all right-of-way applications must be presented to the tribal council or other authorized representative body; and, in the case of unorganized tribes, all railroad rights-of-way and others of more than ordinary importance, should likewise be thus submitted to the council or representative body of the tribe. A record of the proceedings should be kept and a duly authenticated copy attached to the schedule.\* (31 Stat. 1084, sec. 16, 48 Stat. 987; 25 U.S.C. 311, 476) [Sec. 79, Regs., as amended Apr. 7, 1938, 3 F.R. 985]

**256.84 Deposit of damages.** The Federal Power Commission is authorized to fix and collect the annual charge against any water-power project involving tribal Indian lands. Accordingly, no deposit is required in such cases, and the schedule showing the appraisal of damages should be forwarded here immediately upon completion. In all other cases, on completion of the schedules a copy thereof shall be forwarded to the applicant for examination, with request that it be returned accompanied by a deposit of the total award, if such deposit has not theretofore been made, or with a statement of objection, if any. The deposit, if made, should be carried by the Superintendent as a "Special Deposit" until receipt through the Commissioner of Indian Affairs of further instructions regarding its disposition. The amount so deposited should be reported by the superintendent in the certificate appended to the schedule of damages, forwarded here.\*† [Sec. 80]

**256.85 Dissenting allottees.** In the case of railroads, except those involving lands in Oklahoma, the names of individual Indians who refuse to accept the awards made by the Superintendent and whose demands the applicant is unwilling to meet should be eliminated from the schedule prepared under § 256.80 and placed upon a separate schedule designated "Schedule of dissenting allottees." This schedule should be prepared in quadruplicate and forwarded by the Superintendent with a full report, giving the names and addresses of three disinterested persons who are competent and willing to serve as referees in the matter. At least one of the nominees should be named by, or satisfactory to, the railroad company desiring the right of way. The qualifications of the persons so nominated should be set out in the Superintendent's report; and upon their appointment by the Secretary of the Interior they shall take and subscribe before competent authority an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to the Secretary of the Interior. If the referees cannot agree, then any two of them are authorized to make the award. Each of the referees shall receive for his compensation the sum of \$4 per day while engaged in the hearing of any case submitted to them under this section. Witnesses shall receive the fees usually paid by courts within the district where such land is located. Costs, including compensation of the referees, shall be made a part of the award of judgment and shall be paid by the railroad company in interest.\*† [Sec. 81]

**256.86 Right of appeal.** Either party, being dissatisfied with the finding of the referees, shall have the right, within 60 days after the making of the award and notice of the same, to appeal to the United States District Court for the State in which the lands are situated, where the case shall be tried de novo, and the judgment for damages rendered by the court shall be final and conclusive. When proceedings are thus commenced in court, the railroad company shall deposit with the court the amount of the award made by the referees to abide the judgment thereof, and then have the right to enter upon the property sought to be condemned and proceed with the construction of the railway.\*† [Sec. 82]

**256.87 Superintendent's report.** In due course the Superintendent will transmit the schedules of the damages, with a report of the amount deposited by the applicant and his recommendation as to the action which he thinks should be taken. In addition, the report should give the following information:

(a) In the case of allotted lands, is a sale thereof pending, either to the tribe or to an individual? If so, give full details, with name of purchaser, status of transaction, etc.

(b) Does the location conflict with any previous rights of way, and would approval of the application interfere with such previous right of way or the works constructed thereon?

(c) Will the interests of the Indians be benefited or adversely affected by the granting of the right of way, and are any damages likely to occur which could not be compensated by the payment of money?

(d) In the case of a railroad, is the right-of-way located on lands available for power site or irrigation purposes, and would the construction of the road interfere with the development of adjacent waterways for power or irrigation? If so, are the physical conditions such that the right of way could be relocated above possible reservoir or dam sites? If such relocation is impossible, would the lands be considered more valuable for power and irrigation purposes than for a railroad right-of-way?\* [Sec. 83, Regs., May 22, 1928, as amended Apr. 7, 1938, 3 F.R. 985]

**256.88 Adverse rights.** If a prospective sale of allotted lands develops, or if any other adverse rights or interests accrue on either allotted or tribal lands after the papers have been forwarded, and before approval of the application, the Superintendent should at once make a special report of the facts to the Commissioner of Indian Affairs.\* [Sec. 84, Regs., as amended Apr. 7, 1938, 3 F.R. 985]

#### MISCELLANEOUS REQUIREMENTS

**256.89 Approval.** Upon satisfactory compliance with the regulations in this part and such additional requirements as the Secretary of the Interior may from time to time see fit to impose, approval will be given to each application, map, and schedule of damages submitted hereunder and thereupon construction work may proceed.\*† [Sec. 85]

**256.90 Disposition of maps.** Except as provided in § 256.57, the original of each map approved hereunder, covering lands of the

\*†For statutory and source citations, see note to § 256.1.

Osage Nation or the Five Civilized Tribes, Oklahoma, shall be filed in the Office of Indian Affairs and the duplicate transmitted to the Superintendent or other officer in charge for filing in the agency office. The original of all other approved maps shall be sent to the General Land Office for notation and file, and the duplicate filed in the Office of Indian Affairs. If any applicant desires one or more copies of the original map with the approval of the Secretary of the Interior endorsed thereon, the necessary blue prints, in addition to those required by the regulations in this part, should be submitted with the application.\*† [Sec. 86]

**256.91 Affidavits on completion of projects.** When the construction of any railroad, oil or gas pipe line, or telegraph or telephone line authorized hereunder is completed, an affidavit, in duplicate, of the engineer and a certificate, in duplicate, of the owner (the president in case of a company) must be filed in the Office of Indian Affairs. (Forms 5 and 6.)<sup>5</sup> \*† (Sec. 7, 30 Stat. 992, sec. 3, 31 Stat. 1083, secs. 1, 2, 33 Stat. 65, 39 Stat. 973; 25 U.S.C. 317, 319, 321) [Sec. 87]

**256.92 Change of location.** In connection with any project authorized hereunder, if a change from the route or location indicated upon the approved maps is found to be necessary, on account of engineering difficulties or otherwise, new maps and field notes of the changed route or location must be filed and approved, and a right of way upon such changed lines must be acquired, damages ascertained, and compensation paid on account thereof, in all respects as in the case of the original location, before construction work can be proceeded with upon such changed lines.\*† [Sec. 88]

**256.93 Forfeiture.** Section 4 of the Act of March 2, 1899 is not construed as authorizing the Secretary of the Interior to declare a forfeiture of rights of way granted thereunder, but any such forfeiture to be effective must be based upon a finding, either by Congress or the courts, of noncompliance with the provisions of such section.\*† (Secs. 4, 7, 30 Stat. 991, 992; 25 U.S.C. 315, 317) [Sec. 89]

**256.94 Other than corporate applicants.** The foregoing regulations shall be observed, so far as applicable, by any individual, firm, partnership, or unincorporated association, seeking to procure a right of way across Indian lands, with special emphasis on the provisions requiring a satisfactory showing as to the purpose, intent, and financial ability of the applicant. In addition, a copy of articles of partnership or association, duly certified, must be filed; and if there be none, this fact must be stated over the signature of each member of the partnership or association.\*† [Sec. 90]

**256.95 Pueblo lands in New Mexico.** The Act of April 21, 1928, extends to the Pueblo Indians of New Mexico and their lands, under such rules, regulations, and conditions as the Secretary of the In-

<sup>5</sup> See footnote on page 27.

terior may prescribe, the provisions of the Statutes of the United States governing rights-of-way through Indian lands, as follows:

U. S. C.	Purpose	Act
Title 25:		
311-----	Highways-----	Sec. 4, Mar. 3, 1901, 31 Stat. 1084.
312-----	Railroads-----	{ Sec. 4, Mar. 2, 1899, 30 Stat. 990. Sec. 4, Feb. 28, 1902, 32 Stat. 50. Sec. 4, June 21, 1906, 34 Stat. 330. Sec. 16, June 25, 1910, 36 Stat. 859.
313-----		
314-----		
315-----		
317-----		
318-----	Telegraph and telephone lines.	Sec. 3, Mar. 1901, 31 Stat. 1083.
319-----		
321-----	Oil and gas pipe lines----	{ Sec. 3, Mar. 11, 1904, 33 Stat. 65. Sec. 3, Mar. 2, 1917, 39 Stat. 973.
Title 43:		
935-----	Railroads-----	Sec. 2, Mar. 3, 1875, 18 Stat. 482.

The regulations in this part, so far as applicable, are hereby adopted as those authorized by the Act of April 21, 1928 (45 Stat. 442; 25 U.S.C. 322).\* [Sec. 91, Regs., as amended Apr. 7, 1938, 3 F.R. 985]

**256.96 Prior regulations superseded.** The regulations in this part supersede all those heretofore promulgated under the various acts cited.\*† [Sec. 92]

**256.97 Right to amend, alter, or repeal.** The right of the Secretary of the Interior at any time to amend, alter, or repeal the regulations in this part is hereby expressly reserved; and if in the administration of acts herein cited cases are found which are not covered by the regulations in this part, such cases will be disposed of according to their respective merits under special instructions, or supplemental regulations embracing cases of that character will be adopted, as may seem necessary.\*† [Sec. 93]

## Subchapter X—Roads and Highways

### PART 261—CONSTRUCTION AND MAINTENANCE OF ROADS ON INDIAN LANDS

Sec.		Sec.	
261.1	Road program.	261.15	Road signs and colors.
261.2	Roadless areas.	261.16	Co-operation with other units.
261.3	Project approval.	261.17	Expenditure of funds.
261.4	Project statement.	261.18	Authorization for road construction.
261.5	Separate projects.	261.19	Approval by Bureau of Public Roads.
261.6	Classification of roads.	261.20	Co-operation.
261.7	Mapping.	261.21	Cost records.
261.8	Proposed roads.	261.22	Training Indians.
261.9	Route numbers.	261.23	Road machinery and equipment.
261.10	Current progress.	261.24	District road engineers.
261.11	Location and construction.	261.25	Repeal.
261.12	Rights-of-way.		
261.13	Application; reservation roads.		
261.14	Application; State or Federal-aid roads.		

\*†For statutory and source citations, see note to § 256.1.