

end of a trading day. When report type is "DN", report delivery notices stopped (issued) on behalf of the account. When report type is "EP", report purchases (sales) of futures for cash for the account. Report all information in contracts. Position data are reported on a net or gross basis in accordance with paragraphs (e) and (d) of this section.

(xii) *Commodity (2)*. The exchange assigned commodity code for a futures contract or other instrument that a position is exercised into from a date-specific or flexible option.

(xiii) *Expiration Date (2)*. Similar to other dates, the format is YYYYMMDD and represents the expiration date or delivery month and year of the future or other instrument that a position is exercised into from a date-specific or flexible option.

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12. Section 17.02 is proposed to be amended by revising paragraph (a) as follows:

**§ 17.02 Place and Time of Filing Reports.**

\* \* \* \* \*

(a) For data submitted on compatible data processing media:

(1) At the Chicago Regional office for dial-up data transmission; at the Chicago or New York Regional Office for magnetic tape; and at the Chicago, New York or Kansas City Regional Office for magnetic diskettes.

(2) Not later than 9 a.m. on the business day following that to which the information pertains or for contract markets on an exchange that is receiving data from the Commission, at such earlier time as specified by the exchange.

\* \* \* \* \*

13. Section 17.04 is proposed to be amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

**§ 17.04 Reporting omnibus accounts to the carrying futures commission merchant or foreign broker.**

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant or foreign broker shall report to that futures commission merchant or foreign broker the total open long positions and the total open short positions in each future of a commodity, and, for commodity option transactions, the total open long put options, the total open short put options, the total open long call options, and the total open short call options for each commodity option expiration date and each strike price in such account at the close of trading each day. The information required by this

section shall be reported in sufficient time to enable the futures commission merchant or foreign broker with whom the omnibus account is established to comply with Part 17 of these regulations and reporting requirements established by the contract markets.

(b) In determining open long and open short futures positions, and open purchased long and open granted short option positions, in an omnibus account for purposes of complying with § 17.00(f), § 1.37(b) and § 1.58 of this chapter, a futures commission merchant, clearing member or foreign broker shall total the open long positions of all traders and the open short positions of all traders in each future of a commodity and, for commodity option transactions, shall total the open put long options, the open short put options, the open long call options, and the open short call options of all traders for each commodity option expiration date and each strike price. The futures commission merchant, clearing member or foreign broker shall, if both open long and short positions in the same future are carried for the same trader, compute open long or open short futures positions as instructed below.

\* \* \* \* \*

**PART 18—REPORTS BY TRADERS**

14. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a, and 19; 5 U.S.C. 552 and 552(b) unless otherwise noted.

15. Part 18 is proposed to be amended by adding a new § 18.03 as follows:

**§ 18.03 Delegation of authority to the Director of the Division of Economic Analysis.**

The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls on traders for information as set forth in §§ 18.00, 18.04 and 18.05 to the Director of the Division of Economic Analysis to be exercised by the Director or by such other employee or employees of the Director as may be designated from time to time by the Director.

16. Section 18.04 is proposed to be amended by removing paragraph (d) and by revising the introductory text to read as follows:

**§ 18.04 Statement of reporting trader.**

Every trader who holds or controls a reportable option or futures position shall after a special call upon such trader by the Commission or its designee file with the Commission a "Statement of Reporting Trader" on the

form 40 at such time and place as directed in the call. All traders shall complete part A of the form 40 and, in addition, shall complete:

Part B—If the trader is an individual, a partnership or a joint tenant.

Part C—If the trader is a corporation or type of trader other than an individual, partnership, or joint tenant.

\* \* \* \* \*

**PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON**

17. The authority section for part 19 continues to read as follows:

Authority: 7 U.S.C. 6g(a), 6i and 12a(5), unless otherwise noted.

18. Section 19.00 is proposed to be amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

**§ 19.00 General provisions.**

(a) \* \* \*

(1) All persons holding or controlling options or futures positions that are reportable pursuant to § 15.00(b)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter,

\* \* \* \* \*

(3) All persons holding or controlling positions that are reportable pursuant to § 15.00(b)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. Filings in response to a special call shall be made within one business day of receipt of the special call unless otherwise specified in the call. For the purposes of this paragraph, the Commission hereby delegates to the Director of the Division of Economic Analysis, or to such other person designated by the Director, authority to issue calls for series '04 reports.

\* \* \* \* \*

Issued in Washington, DC., this 12th day of July, 1996, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 96-18262 Filed 7-17-96; 8:45 am]

BILLING CODE 6351-01-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 169**

**RIN 1076-AD40**

**Rights-of-Way Over Indian Lands**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The purpose of this rulemaking action is to revise the Rights-of-way over Indian Lands regulations. This was identified for reinvention under the National Performance Review. It is written in plain English to make the rule easier to read and understand for Indian landowners and realty staff.

**DATES:** Comments by interested parties must in writing and we must receive them September 16, 1996.

**ADDRESSES:** You must mail or hand carry your comments to Terrance L. Virden, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS 4513 MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Alice Harwood, Acting Chief, Division of Real Estate Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS 4513 MIB, Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The proposed rule has been rewritten to facilitate its use by the general public and the individual Indians affected by the rule. Sections that no longer apply have been deleted and sections added for clarification. No substantive revisions are proposed in this rule.

The authority to issue rule and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9, and delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

The Department has determined that this rule:

- Does not have significant federalism effects.
- Will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not constitute a major Federal action significantly affecting the human environment, and no detailed statement is needed under the National Environmental Policy Act of 1969;
- Does not have significant takings implications in accordance with Executive Order 12630; and

- Is exempt by OMB from the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and does not require a review by the Office of Management and Budget.

#### List of Subjects in 25 CFR Part 169

Indians, lands.

For the reasons set out in the preamble, we propose to revise Part 169 of Title 25 of the Code of Federal Regulations, as follows:

#### **PART 169—RIGHTS-OF-WAY OVER INDIAN LANDS**

Sec.

- 169.1 What are the definitions of the terms used in this part?
- 169.2 What is the purpose and scope of this regulation?
- 169.3 Do I need the consent of landowners for grants of right-of-way?
- 169.4 How do I get a permit to survey for a right-of-way across individually owned, tribal or government-owned land?
- 196.5 How do I apply for a right-of-way?
- 169.6 Am I required to submit maps?
- 169.7 What are the requirements for field notes?
- 169.8 How do I identify the location of my proposed right-of-way to a public survey?
- 169.9 Can natural objects or monuments be used as terminal points?
- 169.10 How are maps and field notes relevant to township and section lines?
- 169.11 What should affidavits and certificates contain?
- 169.12 What is the consideration for right-of-way grants?
- 169.13 What other damages must I pay?
- 169.14 What must I do to pay for the right-of-way and damages?
- 169.15 How is the grant approval handled?
- 169.16 Do I need to file an affidavit of completion?
- 169.17 What happens if I need to change the location of my right-of-way from the original plan?
- 169.18 Is there a specific time limit for approved right-of-way grants?
- 169.19 Can I renew right-of-way grants?
- 169.20 Will I be notified if my right-of-way grant is terminated?
- 169.21 Who is responsible for reporting condemnation actions involving individually owned Indian lands?
- 169.22 How do I get permission to construct a service line across individually owned Indian land?
- 169.23 How do I get permission to construct a railroad across Indian land?
- 169.24 Are railroads in Oklahoma subject to only two Acts?
- 169.25 What acts authorize oil and gas pipelines?
- 169.26 What must I do to lay a pipeline after my grant for right-of-way is approved?
- 169.27 What Acts authorize rights-of-way grants for telephone and telegraph lines; radio, television and other communications facilities?

169.28 How do I apply for rights-of-way for electric power projects?

169.29 What restrictions apply if I ask for a right-of-way across government owned lands for a transmission line?

169.30 If the Department uses my surplus capacity to transmit power, what conditions apply?

169.31 May I apply for land that I need for generating plants?

169.32 Who can apply to open public highways across Indian lands?

Authority: 5 U.S.C. 301; 62 Stat. 17 (25 U.S.C. 323-328), and other acts cited in the text.

#### **§ 169.1 What are the definitions of the terms used in this part?**

*Field Notes* mean notes taken by the surveyor while surveying land for a right-of-way.

*Individually owned land* means land or any interest therein held in trust by the United States for the benefit of individual Indians, and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

*Government owned land* means land owned by the United States and under the jurisdiction of the Secretary of the Interior which was set aside for the use and benefit of Indians.

*Secretary* means the Secretary of the Interior or authorized representative acting under delegated authority.

*Tribe* means any Indian tribe, band, nation, pueblo, community, corporation, rancheria, colony, or other group of Indians.

*Tribal land* means land or any interest therein, title to which is held by the United States in trust for a tribe or title held by any tribe subject to Federal restrictions against alienation or encumbrance, and land reserved for Indian Bureau administrative purposes or lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

#### **§ 169.2 What is the purpose and scope of this regulation?**

(a) Purpose: These regulations describe the procedures, terms and conditions under which rights-of-way over and across tribal land, individually owned land, and Government owned land, may be granted.

(b) Scope:

(1) Appeals from administrative actions under this part must follow the procedures described in part 2 of this chapter.

(2) These regulations do not cover the granting of rights-of-way upon tribal lands within a reservation for the purpose of constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission

lines or other works that constitute a part of any project for which a license is required by the Federal Power Act.

(c) For lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), the Federal Power Act provides:

(1) That a license must be issued to use tribal lands within a reservation.

(2) The license will contain conditions the Secretary deems necessary for the adequate protection and utilization of such lands; (16 U.S.C. 797(e)).

(3) Annual charges for the use of tribal lands under any license issued by the Federal Power Commission must be subject to the approval of the tribe (16 U.S.C. 803(e)).

**§ 169.3 Do I need the consent of landowners for grants of right-of-way?**

(a) Yes. You must have prior written consent from the tribe for a grant of right-of-way or permission to survey on tribal land.

(b) Yes. You must have prior written consent from the owner or owners of individually owned Indian lands for a grant of a right-of-way or permission to survey. You also must have approval from the Secretary.

(c) The Secretary may issue a permit to survey or a grant of right-of-way over and across individually owned lands without the consent of the individual Indian owners when:

(1) The individual owner is a minor or a person who is not of sound mind.

(2) The land is owned by more than one person and the owners or owners of a majority of interests consent to the grant.

(3) The whereabouts of the owner(s) is unknown, and the owner(s) of any interests or an owner of a majority interest whose whereabouts are known, consent to the grant.

(4) The heirs or devisees of a deceased owner have not been determined.

(5) The owners are so numerous that it is impracticable to obtain their consent.

(6) When the right-of-way will cause no major damage to the owner or the land and can be adequately compensated for by monetary means.

**§ 169.4 How do I get a permit to survey for a right-of-way across individually owned, tribal or government owned land?**

(a) You must file a written application with the Secretary.

(b) You must describe the proposed project fully, citing purpose and general location, and the application must be accompanied by the written consents required by § 169.3.

(c) You must include documentation to show evidence of good faith and financial responsibility.

(d) Your application must be accompanied by a check or money order to cover twice the estimated damages which may occur as a result of the survey.

(e) You may submit a surety bond in lieu of a check or money order provided the company issuing the surety bond is licensed to do business in the State where the land is located.

(f) Your application must contain an agreement for payment to the United States, the owners of the land, and occupants of the land, against liability for loss of life, personal injury, and property damage occurring because of survey activities caused by you, your employees, contractors and their employees or subcontractors and their employees.

(g) If an agency of the Federal or State Government, or an instrumentality thereof, applies and is prohibited by law from depositing estimated damages in advance or agreeing to paying for damages, the requirement for a deposit may be waived providing the agency agrees in writing to pay damages as soon as they occur.

(h) An application filed by a corporation must be accompanied by:

(1) A copy of its charter or articles or incorporation duly certified by a State official of the State where the corporation was organized.

(2) A certified copy of the resolution or bylaws of the corporation authorizing the filing of the application.

(3) A certificate from a State official verifying that the applicant is authorized to do business in the State where the land is located if the applicant is incorporated out of State.

(4) A certified copy of the articles of partnership or association if an application is filed by an unincorporated partnership or association. If there is no certificate, this must be stated over the signature of each member of the unincorporated partnership or association.

(5) Proof of current financial responsibility and good faith will be sufficient, if you have previously filed an application accompanied by the required documents. You must reference the date and place of filing.

(i) The Secretary will write you a letter informing you whether or not you are granted permission to survey.

**§ 169.5 How do I apply for a right-of-way?**

You must submit a written application in duplicate. The application must do all of the following:

(a) Identify the use for the right-of-way.

(b) Cite the statute(s) under which it is filed and the width and length of the requested right-of-way.

(c) Include proof of your good faith and financial responsibility.

(d) If you are a corporation, you must follow the same procedures outlined in § 169.4(h) of this part.

(e) Your application must be accompanied by an affidavit agreeing to do all of the following:

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

(2) To pay promptly all damages and compensation, in addition to the deposit due to the landowners and authorized users and occupants of the land for the survey, granting, and construction and maintenance of the right-of-way.

(3) To pay the landowners and authorized users and occupants against any liability for loss of life, personal injury or property damage arising from the construction, maintenance, occupancy or use of the lands by you, your employees, contractors and their employees, or subcontractors and their employees.

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

(5) To clear and keep clear the right-of-way and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.

(6) To take soil and resource conservation, weed control, and protection measures on the land.

(7) To prevent and suppress fires on or near the lands to be occupied.

(8) To build and repair roads, fences, and trails that may be destroyed or damaged by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under.

(9) To restore as nearly as possible the land to its original condition upon revoking or terminating the right-of-way.

(10) To keep your address current. Corporations will provide the address of its principal place of business and of the names and addresses of its principal officers.

(11) If you are a corporation, you will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

The Secretary may waive this requirement if you are the U.S. Government or a State Government or other part and prohibited by law from executing any of the above stipulations.

(12) You will inform the Bureau of Indian Affairs as to any assignment of right-of-way by providing the name and address of assignee.

**§ 169.6 Am I required to submit maps?**

Yes, an original and two copies of maps of definite location are required with each application. The width of the right-of-way must be clearly shown on the maps.

(a) You must file a separate map for each 20 mile section of right-of-way. The last section may include any excess of 10 miles or less.

(b) The scale should be 2,000 feet to an inch. Maps may be drawn to a larger scale when necessary, unless it makes the maps too cumbersome for convenient handling and filing.

(c) Maps must:

- (1) show the sections, townships, and ranges affected;
- (2) show the allotment number of each tract of allotted land affected; and
- (3) clearly designate each tract of tribal land affected.

**§ 169.7 What are the requirements for field notes?**

You must submit field notes with each application.

Field notes must:

- (a) appear along the line indicating the right-of-way unless this makes the maps too crowded and illegible;
- (b) be filed separately and you must place a sufficient number of station numbers on the maps to make it more convenient to follow the field notes.
- (c) be typewritten;
- (d) be sufficiently complete to permit the line indicating the right-of-way to be readily retraced on the ground;
- (e) show whether the line was run on true or magnetic bearings.
  - (1) If run on magnetic bearings, 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.
  - (2) The 10-mile sections must be indicated and numbered on all lines of road submitted.

**§ 169.8 How do I identify the location of my proposed right-of-way to a public survey?**

(a) The terminal of the line of route must be fixed by reference of course and distance to the nearest existing corner of the public survey. The maps, the engineer's affidavit, and the certificate must show these connections.

(b) If termination 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.

(c) The single bearing and distance from the terminal point to the corner

must be computed and noted on the maps, in the engineer's affidavit, and in the certificate.

(d) The notes and all data for the computation of the traverse must be submitted.

**§ 169.9 Can natural objects or monuments be used as terminal points?**

(a) Connection with a natural object or a permanent monument which can be easily found and recognized, and will fix and perpetuate the position of the terminal point, can be used when the distance from an established corner of the public survey is more than 6 miles.

(b) The maps must show the position of such mark, course, and distance to the terminus.

(c) An accurate description must be made of the mark.

(d) Full data concerning the traverse, the engineer's affidavit, and the certificate on the maps must state the connections.

**§ 169.10 How are maps and field notes relevant to township and section lines?**

(a) The distance to the nearest existing corner must be noted when the line of survey crosses a township or section line of the public survey.

(b) The maps must show these distances and the station numbers at the points of intersections.

(c) The field notes must show these distances and the station numbers.

**§ 169.11 What should affidavits and certificates contain?**

(a) They must contain certification by the survey engineer and you of the accuracy of the survey and maps and a definite location must be written on the maps.

(b) They must designate by termini and length in miles and decimals, the line or route for which the right-of-way application is made.

(c) Maps covering roads built by the Bureau of Indian Affairs to be transferred to a county or State government must contain an affidavit indicating the accuracy of the survey, executed by the Bureau highway engineer in charge of road construction.

(d) A certificate must be submitted by the State or county engineer or other authorized officer accepting the right-of-way stating that the accuracy of the survey and maps is satisfactory.

**§ 169.12 What is the consideration for right-of-way grants?**

(a) Consideration for any right-of-way granted or renewed under this part must be no less than, but not limited to, the fair market value of the rights granted plus severance damages, if any, to the remaining estate.

(b) We will write a letter advising the landowners of the appraisal information to assist them in negotiations for a right-of-way or renewal.

(c) If approved, landowners or their representatives may waive in writing the consideration consisting of fair market value in the renewal or granting of rights-of-way.

**§ 169.13 What other damages must I pay?**

You will be required to pay all damages incident to the survey of the right-of-way or to the construction or maintenance of the facility for which the right-of-way is granted.

**§ 169.14 What must I do to pay for the right-of-way and damages?**

At the time of filing an application for right-of-way, you must:

(a) Deposit the total estimated dollar amount of consideration and damages with the Secretary.

(b) The deposit must include a dollar amount covering:

- (1) consideration for the right-of-way;
- (2) severance damages;
- (3) damages caused during the survey; and
- (4) estimated damages to result from construction less any deposit previously made.

(c) The amount deposited as consideration for the right-of-way over any parcel must not be less than the amount specified in the consent covering that parcel.

(d) If the amounts deposited are inadequate to compensate the owners, you must increase the deposit to an amount determined by the Secretary.

(e) The amounts deposited must be held in a "special deposit" account for distribution.

(f) Amounts deposited to cover damages resulting from survey and construction may be disbursed after the damages have occurred.

(g) Amounts deposited to cover considerations for the right-of-way and severance damages will be disbursed upon the granting for the right-of-way.

(h) Any monies not required for disbursement will be refunded to you promptly following receipt of the affidavit of completion of construction.

**§ 169.15 How is the grant approval handled?**

(a) If your application complies with the regulations, we will issue an approved conveyance document to grant your right-of-way.

(b) We will mail a copy of the conveyance document to you. Maps of definite location may be attached to and incorporated into the conveyance document by reference.

(c) The conveyance document will incorporate all conditions or restrictions.

(d) We may issue one conveyance document covering all of the tracts of land traversed by the right-of-way, or separate conveyance documents that cover one or several tracts included in the application.

(e) We will send a duplicate original copy of the conveyance documents, together with any other pertinent documents, to the office of records where they will be recorded and filed.

(f) You may proceed with the construction work as soon as you receive the approved conveyance document.

**§ 169.16 Do I need to file an affidavit of completion?**

(a) Yes. You must promptly file an affidavit of completion in duplicate, executed by the surveying engineer and certified by you.

(b) One copy of the affidavit will be sent to the office of record.

(c) Failure to file an affidavit will subject the right-of-way to cancellation. (See section 169.20 of this part)

**§ 169.17 What happens if I need to change the location of my right-of-way from the original plan?**

(a) You are required to file amended maps and field notes showing the new location.

(b) A right-of-way for the new route or location will be subject to all requirements of the original location, including consent, approval, damages, and payment of damages.

(c) You must submit necessary documents to extinguish the right-of-way at the original location.

(d) These documents will be sent to the office of record for recording and filing.

**§ 169.18 Is there a specific time limit for approved right-of-way grants?**

(a) Yes. All grants will be in the form of easements for the periods stated in the conveyance document.

(b) Rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), have no time limitation, but rights-of-way for all other purposes will be for a period not to exceed 50 years. This will be reflected in the conveyance document.

(c) Rights-of-way covered under the Act are for:

(1) lines for railroads, telephone lines, telegraph lines;

(2) public roads and highways, access roads to homesite properties;

(3) public sanitary and storm sewer lines including sewage disposal and treatment plants; water control and use

projects (including but not limited to dams, reservoirs, flowage easements, ditches, and canals);

(4) oil, gas, and public utility water pipelines (including pumping stations and related facilities), electric power projects, generating plants, switch yards, electric transmission and distribution (including poles, towers, and related facilities); and

(5) service roads and trails essential to any of the above uses.

**§ 169.19 Can I renew right-of-way grants?**

(a) Yes. You can submit an application for a renewal of the grant on or before the expiration date of any right-of-way granted for a limited term of years.

(b) If the renewal involves no change in the location or status of the original right-of-way grant, you can file with your application a certificate under oath setting out this fact.

(c) Your grant may be extended for a like term of years, upon payment of consideration.

(d) Your application for renewal will be treated the same as an original application, if any change in the size, type, or location is involved.

**§ 169.20 Will I be notified if my right-of-way grant is terminated?**

(a) Yes. All rights-of-way granted under these regulations may be terminated in whole or in part by 30 days written notice.

(b) We will mail you a notice at your last known address.

(c) The right-of-way may be terminated for any of the following causes:

(1) Failure to comply with any terms or conditions of the grant or applicable regulations;

(2) Nonuse of the right-of-way for a consecutive 2-year period for the purpose for which it was granted; or

(3) Abandonment of the right-of-way.

(d) You must correct the causes for termination within 30 days from the date of the notice.

(e) If you fail to correct the causes for termination, an appropriate document terminating the right-of-way will be issued.

(f) The document will be sent to the office of record for recording and filing.

**§ 169.21 Who is responsible for reporting condemnation actions involving individually owned Indian lands?**

Officials of the Bureau of Indian Affairs must report the facts relating to any condemnation action to obtain a right-of-way over individually Indian owned lands to the appropriate officials of the Interior Department so that action

may be taken to safeguard the interests of Indians.

**§ 169.22 How do I get permission to construct a service line across individually owned Indian land?**

(a) You must sign an agreement between the landowner, a legally authorized occupant, or user of individually owned land and yourself, before you begin any work to construct a service line across individually owned land.

(b) There will be limitations on the service lines, such as:

(1) Power lines will be limited to voltages of 14.5 kv. or less; and

(2) Lines for irrigation pumps, commercial or industrial uses will be limited to a voltage not to exceed 34.5 kv.

(c) The service line will supply the individual owner, authorized occupant, or user of land, including schools and churches with:

(1) telephone;

(2) water;

(3) electric power;

(4) gas; and

(5) other utilities.

(d) An agreement as required in paragraph (a) of this section must be signed and in place before you can begin any work for the construction of a service line across tribal land.

(e) The service line will supply the owner, an occupant or user of tribal land with any of the utilities specified in paragraph (c) of this section.

(f) An agreement under paragraph (a) of this section will not be valid unless:

(1) it is duly authorized in advance of construction by the governing body of the Indian tribe,

(2) specifically authorizes you or the occupant to enter into service agreements for utilities without further tribal consent.

(g) The agreement referred to in paragraph (a) of this section must include or have added a plat or diagram showing in detail the location, size, and extent of the line.

(h) The agreement is to encourage the use of telephone, water, electric power, gas and other utilities and to extend these modern conveniences to sparsely settled Indian areas without undue costs. The plat or diagram placed on a separate sheet should bear the signature of the parties.

(i) When tribal lands are involved, the agreement must be accompanied by a certified copy of the tribal authorization.

(j) A signed copy of the agreement, together with a plat or diagram, or an authenticated copy of the tribal authorization, when required, must be filed within 30 days of the agreement.

(k) Failure to meet this requirement may result in the removal of improvements placed on the land at the expense of the party responsible for the placement of such improvements, and

(l) Cause the responsible party to pay for damages caused by his unauthorized act.

**§ 169.23 How do I get permission to construct a railroad across Indian land?**

(a) The Act of March 2, 1899 (30 Stat. 990), as amended by the Acts of February 28, 1902 (32 Stat. 50), June 21, 1906 (34 Stat. 330), and June 25, 1910 (36 Stat. 859; 25 U.S.C. 312-318); The Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934); and the Act of March 3, 1909 (35 Stat. 781), as amended by the Act of May 6, 1910 (36 Stat. 349; 25 U.S.C. 320), authorize grants of rights-of-way across tribal, individually owned and Government-owned land, except in the State of Oklahoma. These grants of rights-of-way may be for railroads, station buildings, depots, machine shops, side tracks, turnouts, and water stations; for reservoirs, material or ballast pits needed to the construction, repair, and maintenance of railroads; and for the planting and growing of trees to protect railroad lines.

(1) Rights-of-way granted under the above acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169.

(2) Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) Rights-of-way for railroads shall not exceed 50 feet in width on each side of the centerline of the road, except where there are heavy cuts and fills, then they shall not exceed 100 feet in width on each side of the road.

(1) 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.

(c) Short spurs and branch lines may be shown on the map of the main line, separately described by termini and length.

(1) Longer spurs and branch lines shall be shown on separate maps.

(2) Grounds desired for station purposes may be indicated on the map of definite location but separate plats must be filed for such grounds.

(3) 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.

(4) All intersecting roads must be represented in ink of a different color from that used for the line for which application is made.

(d) Plats of railroad station grounds shall:

(1) be drawn on a scale of 400 feet to an inch;

(2) must be filed separately from the line of route;

(3) shall show enough of the line of route to indicate the position of the tract with reference to the station grounds.

(4) Each station ground tract must be located with respect to the public survey as provided in § 169.8.

(5) All buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) You must show how the public interest will be promoted by the proposed road if it is parallel to and within 10 miles of, a railroad already built or in course of construction.

(1) Where the Interstate Commerce Commission has made findings, a certified copy of such findings must be filed with the application.

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

(g) You must execute and file, in duplicate, a stipulation obligating the company to:

(1) use all precautions possible to prevent forest fires;

(2) suppress such fires when they occur;

(3) construct and maintain passenger and freight stations for each Government townsite;

(4) permit the crossing of the right-of-way by canals, ditches, and other projects, in a manner satisfactory to the Government officials in charge.

(h) 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.

(1) The authority to use any land shall terminate upon abandonment or failure to use the land for such purposes for a continuous period of 2 years.

**§ 169.24 Are railroads in Oklahoma subject to only two Acts?**

(a) Yes, the Act of February 28, 1902 (32 Stat. 43), and the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328). The February 28 Act authorizes right-of-way grants over tribal and individually owned land in Oklahoma. Rights-of-way under both Acts are subject to pertinent provisions of this part except when

otherwise determined by the Secretary under the Act of February 5, 1948.

(b) One reproducible copy 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 Secretary. 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. 47), full damages must be paid to the Indian owners.

(d) After the maps have been filed, the matter of damages shall be negotiated by the applicant directly with the Indian owners.

(1) 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.

(2) If court proceedings are instituted, the facts shall be reported immediately as provided in § 169.21.

**§ 169.25 What acts authorize oil and gas pipelines?**

(a) The Act of March 11, 1904 (33 Stat. 65), as amended by the Act of March 2, 1917 (39 Stat. 973; 25 U.S.C. 321), the Act of March 11, 1904, as amended, authorizes rights-of-way grants for oil and gas pipelines across tribal, individually owned, and Government-owned land.

(1) Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) Rights-of-way grants under both Acts are subject to the pertinent provisions of this part.

(c) Rights-of-way granted under the Act of March 11, 1904, as amended, for oil and gas pipelines, pumping stations or tank sites cannot extend beyond a term of 20 years. They may be extended for another period, not to exceed 20 years, following the procedures set out in § 169.19 of this part.

**§ 169.26 What must I do to lay a pipeline after my grant for right-of-way is approved?**

(a) You must bury all oil or gas pipelines, including connecting lines, a sufficient depth below the surface of the land so that the pipeline does not interfere with cultivation.

(b) Your construction must comply with the provisions of the applicable Federal and State laws whenever laying a line under a road or highway.

(c) You must keep at least one-half the width of the road open to travel during the period of construction. When you have completed the construction, the road or highway must be restored to its original condition and all excavations must be refilled.

(d) If the line crosses a ravine, canyon, or waterway, you must lay the line below the bed or on a superstructure which will not interfere with the use of the surface.

(e) You must show the size of the proposed pipeline in your application, on the maps, in the engineer's affidavit, and in your certificate. The application and maps must specify whether the pipe is welded, screw-joint, dresser, or other type of coupling.

(f) You must first get written permission from us if you would like to lay additional line(s) of pipe in the same trench, or to replace the original line with larger or smaller pipe. You must pay all damages as determined by us that are incurred by the owners in advance for these additions.

(g) You may apply for additional land for pumping stations or tank sites. The maps must show clearly the location of all structures and the location of all lines connecting with the main line.

(h) If we grant approval for additional lands for pumping stations or tank sites, you must file and execute a stipulation agreeing as follows:

(1) To level all dikes, fire-guards, and excavations when you abandon the right-of-way;

(2) To remove all concrete masonry foundations, bases, and structural works when you abandon the right-of-way;

(3) To restore the land as nearly as possible to its original condition when you abandon the right-of-way;

(4) That a grant for a pumping station or tank site purposes must be subservient to the owner's right to remove or authorize the removal of oil, gas, or other mineral deposits; and

(5) That you will remove the structures for pumping the station or tank site or relocate them if necessary to avoid interference with the exploration for or recovery of oil, gas, or other minerals.

(i) You may be allowed to construct purely lateral lines connecting with oil or gas wells on restricted lands after you have filed a copy of the written consent of the Indian owners and a blueprint copy of a map showing the location.

(1) Lateral lines may be of any diameter or length.

(2) Lateral lines must be limited to those used solely for the transportation of oil or gas from a single tract of tribal or individually owned land to another lateral or to a branch of the main line.

(j) Your books and records must be open to inspection at all reasonable times, in order to allow us to obtain information pertaining in any way to oil or gas produced from tribal or individually owned lands or other lands under the jurisdiction of the Secretary.

**§ 169.27 What Acts authorize right-of-way grants for telephone and telegraph lines; radio, television, and other communications facilities?**

(a) The Act of February 15, 1901 (31 Stat. 790), as amended by the Act of March 4, 1940 (54 Stat. 41; 43 U.S.C. 959); the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961); and the Act of March 3, 1901 (31 Stat. 1083; 25 U.S.C. 319), authorize right-of-way grants across tribal, individually owned, and Government-owned land. Rights-of-way granted under these Acts are subject to this part. They may be granted for:

(1) Telephone and telegraph lines and offices;

(2) Poles and lines for communication purposes; and

(3) Radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities.

(b) Rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), are also subject to the provisions of this section.

(c) You will not be granted a right-of-way for width in excess of 50 feet on each side of the centerline, unless you fully justify a width in excess of 50 feet on each side of the centerline in your application.

(d) You may apply for additional land for office sites if you are engaged in the general telephone and telegraph business. You must file the location of proposed office sites separately from those showing the line of route, and the sites must be drawn to a scale of 50 feet to an inch. Maps must show enough of the line of route to indicate the position of the tract for the sites.

(e) Your tract must be located with respect to the public survey, and all buildings or other structures must be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(f) Rights-of-way will be limited to 200 feet on each side of the centerline for poles and lines for communication purposes.

(g) Radio, television, and other forms of communication transmitting, relay; and receiving structures and facilities, of such lines and poles will be limited to an area not to exceed 400 feet by 400 feet.

(h) A right-of-way granted under the Act of March 4, 1911, as amended, will

be limited to a term not exceeding 50 years from the date of the issuance of such grant.

**§ 169.28 How do I apply for rights-of-way for electric power projects?**

(a) Grants of right-of-way for electric power projects are made under the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961), and the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328). The March 4, 1911 Act authorizes right-of-way grants across tribal, individually owned and Government-owned land for electrical poles and lines for the transmission and distribution of electrical power.

(1) Rights-of-way granted under the above Acts are subject to the provisions of this section as well as other pertinent sections of this part, except where we determine otherwise under the Act of February 5, 1948.

(2) All applications will be referred to the Office of the Assistant Secretary of the Interior for Water and Science or any other agency as may be designated for the area involved. This does not include those applications made by power-marketing agencies of the Department of the Interior.

(3) Your application for authority to survey, locate, or begin construction on any project for the generation, the transmission or distribution of electrical power of 66 kv or higher, involving government-owned lands, will be reviewed with consideration of the relationship for the proposed project to the power development program of the United States.

(i) If the proposed project will not conflict with the program of the United States, the Secretary may act on your application.

(ii) A right-of-way granted under the Act of March 4, 1911, as amended, will be limited to a term not to exceed 50 years from the date of the issuance of the grant.

(iii) Rights-of-way for power lines will be limited to those widths which can be justified and cannot exceed a width of 200 feet on each side of the centerline.

(iv) If you need to change the proposed location, construction, or use of the project to eliminate conflicts with Federal power development, you must consent to or comply with the required changes before we take further action on your application.

(v) You must make provisions, or bear the reasonable cost of making provisions for avoiding inductive interference between any project transmission line or other project works that you build, operate, or maintain on the right-of-way authorized under the grant and any

radio installation, telephone line, or other communicating facilities built or operated by any Federal agency.

(vi) You must comply with any or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(b) [Reserved]

**§ 169.29 What restrictions apply if I ask for a right-of-way across government-owned lands for a transmission line?**

(a) If you apply for a right-of-way for a transmission line having a voltage of 66 kv or more, across Government-owned lands you must comply with § 169.5. You must also execute and file a statement with your application agreeing to accept the right-of-way grant subject to the following conditions:

(1) We reserve the right to acquire such line or facilities at a sum to be determined by your representative, a representative of the Secretary, and a third representative to be selected by the other two for the purpose of determining the value of such property to be acquired.

(2) You must allow the Department of the Interior to use, for the transmission of electrical power, any surplus capacity of the line in excess of the capacity needed by you. You must allow us to increase the capacity of the line at the Department's expense and to use the increased capacity for the transmission of electrical power.

(b) [Reserved]

**§ 169.30 If the Department uses my surplus capacity to transmit power, what conditions apply?**

Use by the Department of surplus or increased capacity will be subject to the following terms and conditions:

(a) If we want to use surplus capacity thought to exist in a line, we will notify you in writing. You must furnish us a certificate within 30 days, stating whether the line has any surplus capacity for the transmission of electrical power in connection with your operations, and, if so, the extent of the surplus capacity.

(b) If you certify that you have surplus capacity available, or have any increased capacity that we pay for, we may interconnect our transmission facilities with your line in a manner that meets approved standards of practice for interconnecting transmission circuits.

(c) We will pay for interconnecting. We will also provide and maintain adequate switching, relaying, and protective equipment to ensure that the normal and efficient operation of your line will not be impaired.

(d) After any interconnection is completed, you must operate and

maintain your line in good condition; and, except in emergencies, must keep in a closed position all connections under your control between your line and the interconnecting facilities that we provide.

(e) You must operate the interconnected power systems (yours and ours) in parallel.

(f) We will transmit electrical power over your line in a way that will not interfere unreasonably with your use and operation of the line in accordance with your normal operating standards. We have the exclusive right to use any increased capacity for the line that we provided.

(g) You don't have to allow us to transmit electrical power over your line to any person receiving services from you on the date that you apply for a grant, unless they are entitled to statutory preference in connection with our distribution and sale of electrical power.

(h) We will pay you the total monthly maintenance and operating costs for the part of your line that we use.

(1) We will pay you a percentage of your total operation and maintenance cost for that part of the line. We will calculate this percentage by dividing the kilowatts of power that we transmit over the line by the total kilowatt capacity of that part of the line.

(2) Total monthly cost may include interest amortization on your net total investment (minus any investment that we make in the part of the line that we use). We will calculate this in accordance with the accounting system prescribed by the Federal Power Commission.

(i) We will use only the part of the line that we paid for.

(j) If you find that you need surplus capacity previously available for our use to transmit of electrical power for your operations, you may modify or revoke the previous certification. You must give us 30 months' advance notice of your intention. You may revoke all or any part of the capacity of the line that we certified as being surplus to your needs.

(k) If, during the existence of the grant, you want 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 in regard to the transmission by the Department of electrical power over your line.

(l) The terms and conditions prescribed in this paragraph may be modified at any time by means of a

supplemental agreement negotiated between you and the Secretary of the Interior or his representative.

**§ 169.31 May I apply for land that I need for generating plants?**

Yes. You may apply for additional lands for generating plants and related facilities. Indicate which lands you need for this purpose on the maps showing the definite location of the right-of-way. You must also file separate maps.

(a) These additional maps must show enough of the line of route to indicate the position of the tract in relation to your transmission line.

(b) You must show the land you need in relation to the public survey as provided in § 169.8, and plat all buildings or other structures on a scale large enough to show clearly their dimensions and relative positions.

**§ 169.32 Who can apply to open public highways across Indian lands?**

(a) The appropriate State or local authorities may apply under this part for authority to open public highways across tribal and individually owned lands in accordance with State laws, as authorized by the Act of March 3, 1901 (31 Stat. 1084; 25 U.S.C. 311).

(b) The appropriate State or local authorities in Nebraska or Montana, instead of applying under this part, 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.

(c) Under the provisions of the Act of March 4, 1915, the appropriate authorities of Nebraska and Montana must serve the Secretary with notice of intent to open the proposed road and must submit a map of definite location on tracing linen showing the width of the proposed road for our approval prior to the laying out and opening of the road.

(d) Applications for public highway rights-of-way over and across roadless and wild areas will be considered in accordance with the regulations contained in part 265 of this chapter.

Dated: July 11, 1996.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 96-18243 Filed 7-17-96; 8:45 am]

BILLING CODE 4310-02-P