

What are PROCEDURAL PROVISIONS of the Rights-of-Way on Indian Land Final Rule?

The following chart lists what the Department considers to be procedural provisions versus other types of provisions, each of which has the following effect:

- “General” means the provision is a general statement.
- “Prospective” means the provision applies only to future right-of-way (ROW) documents (or service line agreements) and does not affect existing ROW documents.
- “Procedural” means the provision addresses process and applies to all existing and future ROW documents.
- “Non-procedural” means the provision is substantive and does not address process. BIA will apply non-procedural provisions only to future ROW documents.

§ 169.7 establishes what existing ROWs are. In summary:

- “Existing ROW documents” means: (1) ROW documents granted prior to the effective date of the final rule and (2) ROW documents granted after the effective date of the rule as a result of an application pending as of the effective date of the final rule, and the applicant chose not to withdraw and resubmit the application on or after the final rule’s effective date.
- “Future ROW documents” means: ROW documents granted after the effective date of the final rule based on applications submitted on or after the effective date of the final rule.

Subpart A - Purpose, Definitions, General Provisions	
§ 169.1 What is the purpose of this part?	General
§ 169.2 What terms do I need to know?	General (but note: refer to the provision using the term because whether a particular term is procedural or non-procedural depends upon the context).
§ 169.3 To what land does this part apply?	General
§ 169.4 When do I need a right-of-way to authorize possession over or across Indian land?	Prospective (but note: your use of a right-of-way for a purpose not specified in the grant may be in trespass under common law)
§ 169.5 What types of rights-of-way does this part cover?	General
§ 169.6 What statutory authority will BIA use to act on requests for rights-of-way under this part?	Prospective
§ 169.7 Does this part apply to right-of-way grants submitted for approval before [EFFECTIVE DATE OF RULE]?	General
§ 169.8 May tribes administer this part on BIA’s behalf?	General

§ 169.9 What laws apply to rights-of-way approved under this part?	Non-procedural, but Federal law applies to ROWs on Indian land regardless of when the ROW was granted.
§ 169.10 What is the effect of a right-of-way on a tribe's jurisdiction over the underlying parcel?	Non-procedural
§ 169.11 What taxes apply to rights-of-way approved under this part?	General. The preamble articulates the strong Federal interest against state and local taxation and in support of tribal taxation.
§ 169.12 How does BIA provide notice to the parties to a right-of-way?	Procedural
§ 169.13 May decisions under this part be appealed?	Procedural
§ 169.14 How does the Paperwork Reduction Act affect this part?	General

Subpart B – Service Line Agreements

§ 169.51 Is a right-of-way required for service lines?	Prospective (but note: if you have an existing service line that is not in compliance with the older version of the regulations, you may be in trespass)
§ 169.52 What is a service line agreement?	Prospective
§ 169.53 What should a service line agreement address?	Prospective
§ 169.54 What are the consent requirements for service line agreements?	Prospective
§ 169.55 Is a valuation required for service line agreements?	Prospective
§ 169.56 Must I file service line agreements with the BIA?	Prospective

Subpart C – Obtaining a Right-of-Way

§ 169.101 How do I obtain a right-of-way across tribal or individually owned Indian land or BIA land?	Prospective
§ 169.102 What must an application for a right-of-way include?	Prospective
§ 169.103 What bonds, insurance, or other security must accompany the application?	Prospective
§ 169.104 What is the release process for a bond or alternative form of security?	Prospective
§ 169.105 What requirements for due diligence must a right-of-way grant include?	Prospective
§ 169.106 How does an applicant identify and contact individual Indian landowners to negotiate a right-of-way?	Prospective

§ 169.107 Must I obtain tribal or individual Indian landowner consent for a right-of-way across Indian land?	Procedural for the purposes of assignments, amendments, and mortgages granted after the effective date of the regulations; otherwise, prospective.
§ 169.108 Who is authorized to consent to a right-of-way?	Prospective / general
§ 169.109 Whose consent do I need for a right-of-way when there is a life estate on the tract?	Procedural for the purposes of assignments, amendments, and mortgages granted after the effective date of the regulations; otherwise, prospective.
§ 169.110 How much monetary compensation must be paid for a right-of-way over or across tribal land?	Prospective
§ 169.111 Must a right-of-way grant for tribal land provide for compensation reviews or adjustments?	Prospective
§ 169.112 How much monetary compensation must be paid for a right-of-way over or across individually owned Indian land?	Prospective
§ 169.113 Must a right-of-way grant for individually owned Indian land provide for compensation reviews or adjustments?	Prospective
§ 169.114 How will BIA determine fair market value for a right-of-way?	Prospective
§ 169.115 When are monetary compensation payments due under a right-of-way?	Prospective
§ 169.116 Must a right-of-way specify who receives monetary compensation payments?	Prospective
§ 169.117 What form of monetary compensation is acceptable under a right-of-way?	Prospective
§ 169.118 May the right-of-way provide for non-monetary or varying types of compensation?	Prospective
§ 169.119 Will BIA notify a grantee when a payment is due for a right-of-way?	Procedural
§ 169.120 What other types of payments are required for a right-of-way?	Prospective

§ 169.121 How will compensation be distributed among the life tenants and owners of the remainder interests?	Prospective
§ 169.122 Who does the grantee pay if there is a life estate on the tract?	Prospective
§ 169.123 What is the process for BIA to grant a right-of-way?	Prospective
§ 169.124 How will BIA determine whether to grant a right-of-way?	Prospective
§ 169.125 What will the grant of right-of-way contain?	Prospective
§ 169.126 May a right-of-way contain a preference consistent with tribal law for employment of tribal members?	Prospective
§ 169.127 Is a new right-of-way grant required for a new use within or overlapping an existing right-of-way?	Procedural
§ 169.128 When will BIA grant a right-of-way for a new use within or overlapping an existing right-of-way?	Prospective
§ 169.129 What is required if the location described in the original application and grant differs from the construction location?	Procedural
§ 169.130 Must a right-of-way grant address ownership of permanent improvements?	Prospective
Subpart D –Duration, Renewals, Amendments, Assignments, Mortgages	
§ 169.201 How long may the duration of a right-of-way grant be?	Prospective
§ 169.202 Under what circumstances will a grant of right-of-way be renewed?	Procedural
§ 169.203 May a right-of-way be renewed multiple times?	Procedural

§ 169.204 May a grantee amend a right-of-way?	Procedural
§ 169.205 What is the approval process for an amendment of a right-of-way?	Procedural
§ 169.206 How will BIA decide whether to approve an amendment of a right-of-way?	Procedural
§ 169.207 May a grantee assign a right-of-way?	Procedural
§ 169.208 What is the approval process for an assignment of a right-of-way?	Procedural
§ 169.209 How will BIA decide whether to approve an assignment of a right-of-way?	Procedural
§ 169.210 May a grantee mortgage a right-of-way?	Procedural
§ 169.211 What is the approval process for a mortgage of a right-of-way?	Procedural
§ 169.212 How will BIA decide whether to approve a mortgage of a right-of-way?	Procedural
Subpart E – Effectiveness	
§ 169.301 When will a right-of-way document be effective?	Procedural
§ 169.302 Must a right-of-way be recorded?	Procedural
§ 169.303 What happens if BIA denies a right-of-way document?	Procedural
§ 169.304 What happens if BIA does not meet a deadline for issuing a decision on a right-of-way document?	Procedural
§ 169.305 Will BIA require an appeal bond for an appeal of a decision on a right-of-way document?	Procedural
Subpart F – Compliance and Enforcement	

§ 169.401 What is the purpose and scope of this subpart?	General
§ 169.402 Who may investigate compliance with a right-of-way?	Procedural
§ 169.403 May a right-of-way provide for negotiated remedies?	Prospective
§ 169.404 What will BIA do about a violation of a right-of-way grant?	Procedural
§ 169.405 What will BIA do if the grantee does not cure a violation of a right-of-way grant on time?	Procedural
§ 169.406 Will late payment charges, penalties, or special fees apply to delinquent payments due under a right-of-way grant?	Procedural
§ 169.407 How will payment rights relating to a right-of-way grant be allocated?	Procedural
§ 169.408 What is the process for cancelling a right-of-way for non-use or abandonment?	Procedural
§ 169.409 When will a cancellation of a right-of-way grant be effective?	Procedural
§ 169.410 What will BIA do if a grantee remains in possession after a right-of-way expires or is terminated or cancelled?	Procedural
§ 169.411 Will BIA appeal bond regulations apply to cancellation decisions involving right-of-way grants?	Procedural
§ 169.412 When will BIA issue a decision on an appeal from a right-of-way decision?	Procedural
§ 169.413 What if an individual or entity takes possession of or uses Indian land or BIA land without a right-of-way or other proper authorization?	General (existing law also allows BIA to take action under these circumstances)

§ 169.414 May BIA take emergency action if Indian land is threatened?	General (existing law also allows BIA to take action under these circumstances)
§ 169.415 How will BIA conduct compliance and enforcement when there is a life estate on the tract?	Procedural