

**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.

<b>Subpart A - Purpose, Definitions, General Provisions</b>	
§ 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
<b>Subpart B – Service Line Agreements</b>	
§ 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
<b>Subpart C – Obtaining a Right-of-Way</b>	
§ 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
<b>Subpart D –Duration, Renewals, Amendments, Assignments, Mortgages</b>	
§ 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
<b>Subpart E – Effectiveness</b>	
§ 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
<b>Subpart F – Compliance and Enforcement</b>	

§ 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

**BIA RIGHT-OF-WAY CHECKLIST**

Applicant: \_\_\_\_\_ Purpose: \_\_\_\_\_  
 Land Status: Tribal Allotment Location: \_\_\_\_\_  
 New  Renewal  Amendment  Assignment  Mortgage

<u>DATE:</u>	<u>DOCUMENTATION:</u>	<u>YES</u>	<u>NO</u>	<u>N/A</u>
<b>Preliminary Documents</b>				
_____	Applicant's Letter of Intent to Obtain ROW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Title Status Report, Landowner Name and Address	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Permission to Survey from Landowners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Field Inspection (Photos, Maps, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Right-of-Way Application Package</b>				
_____	Acknowledgement Letter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Incomplete/Complete Letter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Consent(s):</b>				
_____	Tribal Resolution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Landowner(s) Consent to Grant ROW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Spreadsheet - consent percentage calculation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Superintendent/Regional Director per 25 CFR 169.108	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Maps:</b>				
_____	Survey Plat/Legal description	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Location Map showing adjacent existing facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Environmental Compliance:</b>				
_____	Categorical Exclusion (CatEX)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Environmental Assessment (EA)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Finding of No Significant of Impact (FONSI)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Environmental Impact Statement (EIS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Record of Decision (ROD)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	NHPA Section 106	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	ESA Section 7 review	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Valuation:</b>				
_____	Valuation Report received	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Valuation Review requested (OASIS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Certification of Valuation Review by OST Appraisal Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Fair Market Value _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Applicant's Offer _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Letter(s) to Landowner(s) re: FMV	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Corporate Documents:</b>				
_____	Authority of Officers to Execute Documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Articles of Partnership or Association	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	State-certified corporate charter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	License to do business (Tribe and/or State)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Waivers:</b>				
_____	Valuation (Appraisal, market analysis, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Bond(s), insurance, and/or alternative form of security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Compensation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Permission to cross existing rights-of-way, if applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Decision</b>				
_____	Findings and Recommendation Report for Decision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Letter - Notice of Intent to Grant b/c Landowners So Numerous (if applicat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Letter - Approval or Denial with Appeal Right to Parties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Payment - Lockbox or Proof of Payment for Direct Payment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Grant of Easement for ROW Approval Date: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Distribution:</b>				
_____	Applicant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Tribe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Landowner(s), if requested.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Post Decision</b>				
Encode in TAAMS:				
_____	LAC: _____ TAAMS ID No. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Contractor ID No. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Scan Image	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	TIR Log	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Recording No. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Construction Completion (Due Diligence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	Final Field Inspection Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prepared by: _____	Title: _____	Date: _____		