

## PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 8. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 371.

### § 186.1551 [Removed]

■ 9. Remove § 186.1551.

Dated: July 29, 2023.

**Robert M. Califf,**

*Commissioner of Food and Drugs.*

[FR Doc. 2023–16725 Filed 8–8–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 2

[234A2100DD/AAKC001030/A0A501010.999900]

**RIN 1076–AF64**

#### Appeals From Administrative Actions

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

**ACTION:** Final rule.

**SUMMARY:** The Department of the Interior (Department) is finalizing updates to its regulations governing the process for pursuing administrative review of actions by Indian Affairs officials. These updates provide greater specificity and clarity to the Department's appeals process; and reflect changes in the structure and nomenclature within Indian Affairs.

**DATES:** This rule is effective on September 8, 2023.

**FOR FURTHER INFORMATION CONTACT:** Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action (RACA), Office of the Assistant Secretary—Indian Affairs; Department of the Interior, telephone (202) 738–6065, [RACA@bia.gov](mailto:RACA@bia.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary; AS–IA) by 209 Departmental Manual (DM) 8.

#### Table of Contents

- I. Executive Summary
- II. Background
  - A. Providing Mechanisms for Appealing Decisions by Indian Affairs Officials That Did Not Exist in 1989
  - B. Presenting the Regulations in Plain English
  - C. Authorizing, Where Possible, the Filing of Appeal Documents in Portable Document Format (pdf) via Email

- D. Clarifying the Process by Which the Assistant Secretary—Indian Affairs Takes Jurisdiction of an Appeal to the Interior Board of Indian Appeals (IBIA); and the Process Employed Whenever the Assistant Secretary—Indian Affairs Exercises Appellate Authority
- E. Making Certain Changes to the Process for Appealing Inaction of an Official
- F. To Establish a New Subpart To Expedite the Effectiveness of a BIA Decision Regarding Recognition of a Tribal Representative
- G. Establishing a New Subpart Providing Holders of Trust Accounts a Mechanism for Disputing the Accuracy of Statements of Performance Issued by the Bureau of Trust Funds Administration (BTFA)
- H. Establishing a New Subpart Setting Out the Process for Resolving Challenges to Administrative Actions by Alternative Dispute Resolution Instead of by Formal Appeals
- III. Comments on the Proposed Rule and Responses to Comments
  - A. Summary of Subpart H
  - B. Written Comment
- IV. Summary of the Final Rule and Changes From Proposed Rule to Final Rule
  - A. Subpart A—Purpose, Definitions, and Scope of This Part
  - B. Subpart B—Appealing Administrative Decisions
  - C. Subpart C—Effectiveness and Finality of Decisions
  - D. Subpart D—Appeal Bonds
  - E. Subpart E—Deciding Appeals
  - F. Subpart F—Appealing Inaction of an Agency Official
  - G. Subpart G—Special Rules Regarding Recognition of Tribal Representative
  - H. Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance
  - I. Subpart I—Alternative Dispute Resolution
- V. Procedural Requirements
  - 1. Regulatory Planning and Review (E.O. 12866)
  - 2. Regulatory Flexibility Act
  - 3. Congressional Review Act (CRA)
  - 4. Unfunded Mandates Reform Act of 1995
  - 5. Takings (E.O. 12630)
  - 6. Federalism (E.O. 13132)
  - 7. Civil Justice Reform (E.O. 12988)
  - 8. Consultation With Indian Tribes (E.O. 13175)
  - 9. Paperwork Reduction Act
  - 10. National Environmental Policy Act (NEPA)
  - 11. Effects on the Energy Supply (E.O. 13211)

#### I. Executive Summary

This final rule revises the Department of the Interior's (Department) regulations governing administrative appeals of decisions by officials subordinate to the Assistant Secretary—Indian Affairs (AS–IA). These regulations, at 25 CFR part 2, have not been updated since 1989. These revisions, set out in plain English, will facilitate the Secretary's fulfillment of fiduciary responsibilities to Tribes and

individual Indians. This rule updates the regulations to align the terminology and processes with organizational changes since 1989. Additionally, the rule allows, where possible, the filing of appeal documents in Portable Document Format via email. The rule clarifies the process by which the AS–IA takes jurisdiction of an appeal to the Interior Board of Indian Appeals and for appealing inaction of an official. A new subpart allows for expediting the effectiveness of a Bureau of Indian Affairs (BIA) decision regarding recognition of a tribal representative. Another addition is the establishment of provisions allowing holders of trust accounts a mechanism for disputing the accuracy of statements of performance issued by the Bureau of Trust Funds Administration. Finally, there are provisions to resolve disputes through alternative dispute resolution. All of the revisions clarify and standardize Departmental policy.

#### II. Background

The regulations governing administrative appeals of actions by Indian Affairs officials are in title 25, chapter I of the Code of Federal Regulations (25 CFR part 2). The last major revision of the part 2 regulations was in 1989. See 54 FR 6478 (Feb. 10, 1989). The background of this rulemaking and Section-by-Section analysis are in the preamble to the proposed rule published on December 1, 2022 (87 FR 73688). During the 90-day comment period, the Department held two consultation sessions directly with Indian Tribes: February 17, 2022, via webinar; and February 22, 2022, via webinar. The public comment period on the proposed rule ended on March 1, 2023.

The Department revised the appeals regulations in a number of ways, as explained below:

- *Providing Mechanisms for Appealing Decisions by Indian Affairs Officials That Did Not Exist in 1989*

A number of significant changes have been made to the organization of Indian Affairs since publication of the prior part 2 regulations in 1989. In 2003, the office of the Director of the Bureau of Indian Affairs was created and charged with some of the responsibilities previously carried out by the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs. 130 DM 3 (Apr. 21, 2003). The Bureau of Indian Education, formerly an agency within the Bureau of Indian Affairs (BIA), was established as a separate Bureau. More recently, the Secretary created the Bureau of Trust Funds

Administration within the Office of the Assistant Secretary—Indian Affairs. Several other offices are not within any Bureau, reporting directly to the Assistant Secretary: the Office of Indian Gaming, the Office of Indian Economic Development, and the Office of Self-Government. Furthermore, today more decisions are being made in the Central Office of BIA, rather than the Agency and Regional Offices. The prior part 2 regulations do not provide for such changes within the organization or allow for certain types of decisions to have administrative appeals.

Before the publication of the prior part 2 regulations, the Secretary terminated the position of Deputy Assistant Secretary, reporting directly to the Assistant Secretary, and established the position of Deputy to the Assistant Secretary, within the BIA and reporting to the Commissioner of Indian Affairs. Sec. Order 3112. The prior part 2 regulations include the Deputies to the Assistant Secretary among the BIA officials whose decisions are subject to appeal to the IBIA (with the exception of the Deputy to the Assistant Secretary (Indian Education Programs)). Shortly after publication of the prior part 2 regulations, the Department re-instated Deputy Assistant Secretaries within the office of the Assistant Secretary, and retitled the Deputies to the Assistant Secretary as Office Directors within the BIA. Consequently, the revisions bring the regulatory language in line with the structure of Indian Affairs, and clarify that the Assistant Secretary has jurisdiction over appeals of actions by Deputy Assistant Secretaries.

- *Presenting the Regulations in Plain English*

Subsequent to the 1989 promulgations of the prior part 2 regulations, Congress and the President directed Federal agencies to use plain and direct language in agencies' regulations. See the Plain Writing Act of 2010 (124 Stat. 2861), E.O. 12866 (1993), and E.O. 13565 (2011). These revisions comply with those directives.

- *Authorizing, Where Possible, the Filing of Appeal Documents in Portable Document Format (pdf) via Email*

The shift from paper documents sent via United States mail, to electronic documents sent via the internet, is one of the defining transformations of our era. But the greater convenience, speed, and economy that make a modern paperless case-filing system so superior cannot be enjoyed until necessary infrastructure is in place. For the BIA, as well as for stakeholders across Indian

country, it will be some time before such infrastructure is fully enabled.

Revised subpart B, at § 2.214(i), authorizes BIA officials to permit electronic filings, but preserves the default of reliance on hard copies.

- *Clarifying the Process by Which the Assistant Secretary—Indian Affairs Takes Jurisdiction of an Appeal to the Interior Board of Indian Appeals (IBIA); and the Process Employed Whenever the Assistant Secretary—Indian Affairs Exercises Appellate Authority*

Revised subpart E, at §§ 2.508, 2.509, and 2.510, addresses the Assistant Secretary's authority to take jurisdiction over an appeal to the IBIA, and clarifies the processes applicable to any appeals to the Assistant Secretary. In order to ensure that the Assistant Secretary has sufficient time to scrutinize a notice of appeal to the IBIA, and decide whether to assume jurisdiction over it, the deadline by which the Assistant Secretary must notify the IBIA of a decision to take jurisdiction has been extended, from 20 days after IBIA's receipt of the Notice of Appeal under the current regulations, to 40 days after IBIA's receipt of the Notice of Appeal.

- *Making Certain Changes to the Process for Appealing Inaction of an Official*

Revised subpart F sets out the process by which a person may try to compel a BIA official to take action on a request or appeal. In the prior part 2, comparable provisions are at 25 CFR 2.8. The prior regulations directed such appeals to the next official or entity in the appeals process. For example, an appeal from the inaction of a BIA Regional Director would go to the IBIA, which has no supervisory authority over the Regional Director. The revisions, on the other hand, direct all such appeals of inaction up the chain of command of the official whose alleged inaction gave rise to the appeal. Under the revisions, the only action to be taken by the superior official is to direct the subordinate official to take action.

- *Establishing a New Subpart To Expedite the Effectiveness of a BIA Decision Regarding Recognition of a Tribal Representative*

Congress exercises plenary authority over the relationship between Tribes and non-Tribal governments in the United States. Congress has delegated the responsibility for "the management of public business relating to Indians" to the Secretary of the Interior. 43 U.S.C. 1457; see also 25 U.S.C. 2. A vital component of such management is the "responsibility for carrying on

government relations with [Tribes]." *Goodface v. Grassrope*, 708 F.2d 335, 339 (8th Cir. 1983).

Revised subpart G sets out an appeals process intended to minimize the time during which a BIA tribal representative recognition decision does not go into effect due to being appealed. The revised regulations make the decision of the first-level reviewing official (typically, the Regional Director) immediately effective. Interested parties may appeal the reviewing official's decision as provided in part 2, or initiate Federal litigation pursuant to the Administrative Procedures Act (APA).

- *Establishing a New Subpart Providing Holders of Trust Accounts a Mechanism for Disputing the Accuracy of Statements of Performance Issued by the Bureau of Trust Funds Administration*

Previously, there was no administrative appeal procedure by which the recipient of a statement of performance may dispute the information presented on the statement. Revised subpart H sets out such an administrative appeals procedure. Like all administrative appeal provisions, those in revised subpart H serve two important purposes—to provide an opportunity for the agency to correct its own errors, and to ensure development of a complete administrative record for a court to review in the event of an APA challenge to the final agency action.

- *Establishing a New Subpart Setting Out the Process for Resolving Challenges to Administrative Actions by Alternative Dispute Resolution Instead of by Formal Appeals*

In 2001, the Secretary established the Department's Office of Collaborative Action and Dispute Resolution (CADR). CADR manages the Department's dispute resolution program, providing employees and outside stakeholders an alternative mechanism for resolving disputes. Revised subpart I identifies the process by which a person seeking to challenge an agency action can make use of the CADR's dispute resolution program.

### III. Comments on the Proposed Rule and Responses to Comments

The Department sought public comment on the proposed rule, as well as Tribal input through two consultation sessions. In total, the Department received one written comment submission from an Indian Tribe commenting on the proposed rule, specifically concerning Subpart H of the proposed rule. This comment is available for public inspection. To view

this comment, search by Docket Number “BIA–2022–0002–0003” in <https://www.regulations.gov>. The Department has decided to proceed to the final rule stage after careful consideration of all comments, both written and during the consultation sessions. The Department’s response to this one written comment is detailed below.

#### • *Summary of Subpart H*

The Department promulgated Subpart H to create a process by which Tribal or Individual Indian Money (IIM) account holders may dispute the accuracy of account balances contained within a Statement of Performance. Presently there is no administrative appeal process by which account holders may dispute their account balances.

Statements of Performance and decisions rendered pursuant to this rule will be deemed accurate and complete when the deadline for submitting an objection to the Statement of Performance or an appeal to the decision on an objection has expired and the account holder has not submitted an objection or an appeal.

The rule also notes that, if a Tribe has entered into a settlement with the United States and that settlement contains language concerning the challenge of a Statement of Performance, the language in the settlement agreement will control.

This subpart applies only to the data on the Statement of Performance itself. If an account holder wants to challenge the underlying lease or other action that generated the proceeds deposited into their trust account, that challenge must be made (using the process in subpart A at 2.103 and subpart B) to the individual BIA Agency or Region that approved the underlying lease or other action.

#### • *Written Comment*

The Department received one written comment on the proposed rule. The commenter asserted that the new subpart H improperly requires all account holders to appeal their Statement of Performance. In fact, subpart H allows account holders the same administrative appeal rights for the accuracy of their Statement of Performance that they have regarding all other actions taken by the Department concerning their trust property. The addition of subpart H allows all account holders, whether their account balance is \$10.00 or \$100,000.00, the opportunity to file an administrative appeal.

Additionally, the commenter took the position that adding Subpart H to the rule reduces the general federal statutory six-year statute of limitations

for challenging federal actions. The rule does not affect the time limitation for filing a federal lawsuit. It does, however, provide an economical means for an account holder to challenge agency action, and for the agency to correct its own mistakes, before going through the time and expense of litigation. The Department’s decision on any such administrative appeal is the final agency action; the six-year statute of limitations begins to run when the decision is rendered.

Finally, the commenter was concerned that even though they entered into a settlement agreement with the United States that contained agreement amongst the parties as to how to dispute issues with their trust funds, the rule would supersede their settlement agreement. That was not the intent of the language provided in the proposed rule. The Department reviewed the concern expressed by the commenter. In this Final Rule at § 2.803, we have clarified that where a Tribe has entered into a settlement agreement with the United States about their trust funds, that document would continue to control if there were issues concerning the challenge of a Statement of Performance.

#### **IV. Summary of Final Rule and Changes From Proposed Rule to Final Rule**

##### *A. Subpart A—Purpose, Definitions, and Scope of This Part*

This revised subpart expands the definitions that will be used throughout the rule, including definitions for the current structure of Indian Affairs. The prior regulations provided minimal definitions, and a considered effort was made to include appropriate definitions to provide clarity for the parties. Previously there existed confusion about what constitutes an administrative record. The final rule rectifies that confusion. The final rule also provides definitions to distinguish between a deciding official and a reviewing official, as well as defining who has standing to make an appeal.

The prior regulations stated that part 2 only applies to appeals from decisions made by BIA officials. Since the part 2 regulations were promulgated in 1989, the prior structure of Indian Affairs has changed. Now, in addition to decisions made by officials in the BIA, decisions are made by officials in the Bureau of Indian Education, the Bureau of Trust Funds Administration, the Office of Indian Gaming, the Office of Indian Economic Development, and the Office of Self-Governance. The prior regulations did not provide a process for

the administrative appeal of actions by the officials of any of those offices.

The final rule provides an avenue for decisions made by the various offices within Indian Affairs to be appealed. Subject to any exceptions to this part and other applicable law or regulation, an individual may appeal any discrete written decision made by a decision-maker that adversely affects his or her legally protected interests, including a determination by the decision-maker that he or she lacks the authority to take the action that was requested. The final rule also contains a chart identifying actions that are not appealable under this part because those actions are appealable under some other part in title 25 of the CFR, or under provisions in title 5, 41, 42, or 48 of the CFR.

Under the IBIA’s current regulations, the IBIA’s general appellate authority is limited to decisions by BIA officials. 43 CFR 4.1(b)(2); 4.330. Therefore, the revised part 2 regulations vest AS–IA with appellate authority over decisions by Indian Affairs officials who are not within the BIA. If IBIA’s jurisdictional scope is expanded in the future, the Assistant Secretary may consider revising part 2 to vest in the IBIA jurisdiction over appeals from decisions by Indian Affairs officials who are not within the BIA.

In an effort to provide further clarity for the public, the regulations provide the precise language for the notice of appeal rights that must be included in decisions that are appealable under this part. The final rule states that a copy of an appealable decision will be mailed to all known interested parties at their address of record.

No changes were made from the proposed rule to final rule.

##### *B. Subpart B—Appealing Administrative Decisions*

This revised subpart aims to provide clarity regarding whether you have standing to appeal a decision, whether you are required to have a lawyer represent you to file an appeal, and timeframes for filing appeals. The subpart provides a chart at § 2.202 that clarifies who a decision-maker is and who would be the reviewing official responsible for reviewing an appeal of the decision. Deadlines are discussed in detail with explanations about how those deadlines are calculated and how appeals are to be filed.

The final rule also provides detailed information on how to submit a notice of appeal and includes a list of what information must be included in a notice of appeal. There is an explanation of who must receive copies of the notice of appeal, the deadlines for

interested parties to file responses, and the information that a response must contain. The final rule details the role of the decision-maker in the appeals process, which is to compile the administrative record and provide it to the reviewing official.

No changes were made from the proposed rule to final rule.

#### *C. Subpart C—Effectiveness and Finality of Decisions*

This revised subpart clarifies when an agency action is effective and when it becomes a final agency action (with definitions for both of those terms). The final rule aims to reflect IBIA case law interpreting the current regulations.

No changes were made from the proposed rule to final rule.

#### *D. Subpart D—Appeal Bonds*

This revised subpart provides that an interested party (as defined in the revised regulations) may request an appeal bond where the delay caused by an appeal may result in a measurable and substantial financial loss or damage to a trust asset that is the subject of the appeal. The subpart also states that the reviewing official may on his or her own initiative require an appeal bond be posted. Previously the regulations permitted appeal bonds, but did not specify what is an acceptable appeal bond. The final rule details acceptable forms of appeal bonds and states that the bond must have a market value at least equal to the total amount of the bond. The final rule makes clear that a decision on an appeal bond cannot itself be appealed.

No changes were made from the proposed rule to final rule.

#### *E. Subpart E—Deciding Appeals*

This revised subpart provides information concerning consolidation of appeals, partial implementation of appealed decisions, withdrawal of appeals, dismissal of appeals, and applicable deadlines.

When assessing an appeal, the reviewing official will consider all relevant documents submitted by the decision-maker and the participants that were filed within the applicable deadlines, the applicable laws, regulations, Secretarial Orders, Solicitor's Opinions, policies, implementing guidance, and prior judicial and administrative decisions that are relevant to the appeal.

The revised subpart includes a chart at § 2.507 that provides details concerning who is a reviewing official and who will be the official responsible for considering an appeal of the reviewing official's decision. There is

specific language stating that AS-IA may assume jurisdiction over an appeal to the IBIA within 40 days from the date that the IBIA received the appeal. The final rule provides clear language stating that interested parties may not petition AS-IA to take jurisdiction over an appeal. The rule sets forth the process for AS-IA to decide an appeal when jurisdiction is assumed from the IBIA.

These regulations do not impact the power of the Secretary or the Director of the Office of Hearings and Appeals to take jurisdiction over an appeal pursuant to 43 CFR 4.5.

No changes were made from the proposed rule to final rule.

#### *F. Subpart F—Appealing Inaction of an Agency Official*

This revised subpart sets out a process by which a person can attempt to compel an agency official's action where there has been inaction. The prior regulations require an individual to notify the official of their inaction, require the individual to submit certain documentation, and require the official to provide a decision within 10 days of receipt or provide a reasonable time period to issue a decision not to exceed 60 days. The final rule expands the time period for the official to issue a response from 10 days to 15 days. The 60-day deadline for the reviewing official's decision does not change.

The final rule then provides the appropriate chain of command for the Indian Affairs official so that individuals know to whom to submit their appeal of inaction. The rule also states that continued inaction is grounds for an appeal. The final rule establishes deadlines for each level of appeal. The rule states that if you exhaust the provisions of this subpart without obtaining a decision, the inaction is considered a final agency action. The rule clearly states that inaction by the IBIA and AS-IA is not appealable under this part.

No changes were made from the proposed rule to final rule.

#### *G. Subpart G—Special Rules Regarding Recognition of Tribal Representatives*

This revised subpart sets out an appeals process differing in some ways from the process in the rest of revised part 2, to shorten the time frames for appeals of BIA tribal representative recognition decisions. Pursuant to the revised subpart, a reviewing official's decision is immediately effective, but not final for the Department. The revised subpart provides that an interested party may elect to pursue further administrative review, or file an APA challenge in Federal court.

No changes were made from the proposed rule to final rule.

#### *H. Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance*

This revised subpart sets out a process by which Tribal or Individual Indian Money (IIM) account holders may dispute the accuracy of account balances contained within a Statement of Performance. Previously there was no opportunity for account holders to question their account balance administratively.

Account holders would receive a Statement of Performance at least each quarter. In limited circumstances, account holders may only receive a Statement of Performance annually based upon limited activity. The Statement of Performance contains specific information: (1) the source, type, and status of the funds; (2) the beginning balance; (3) the gains and losses; (4) receipts and disbursements; and (5) the ending balance. If an account holder believes that the balance contained within the Statement of Performance is not accurate, this subpart will provide them with an opportunity to dispute the accuracy. The appeal process must be initiated within 60 calendar days of the statement date located on the Statement of Performance.

This subpart is designed to provide an account holder with an opportunity to submit to the deciding official an objection to the Statement of Performance. The deciding official is required to acknowledge receipt of the account holder's objection within 10 calendar days. The deciding official will review the information contained within the objection, make a determination about the accuracy of the account balance, and issue a decision on the objection within 30 calendar days from the date of receipt of your objection. The account holder then has an opportunity to submit an appeal of that decision to the Director, Bureau of Trust Funds Administration. This appeal must be filed within 30 calendar days of the issuance of the decision being appealed. The Director, Bureau of Trust Funds Administration will issue a ruling within 30 calendar days of the receipt of the account holder's appeal. The account holder may then appeal the Director, Bureau of Trust Funds Administration ruling to the AS-IA. AS-IA will make a final decision on the account holder's appeal.

Statements of Performance and decisions rendered pursuant to this subpart is deemed accurate and complete when the deadline for

submitting an objection to the Statement of Performance or an appeal to the decision on an objection has expired and the account holder has not submitted an objection or an appeal.

The final rule also notes that, if a Tribe has entered into a settlement with the United States and that settlement contains language concerning the challenge of a Statement of Performance, the language in the settlement agreement will control over these regulations.

This revised subpart applies only to the data on the Statement of Performance itself. If an account holder wants to challenge the underlying lease that generated the proceeds deposited into their trust account, that challenge must be made (using the process in subpart A at § 2.103 and subpart B) to the individual BIA Agency or Region that approved the lease.

Changes from the proposed rule to final rule in this subpart include:

- In this final Rule at § 2.803, the Department clarified that where a Tribe has entered into a settlement agreement with the United States about their trust funds, that document would continue to control if there were issues concerning the challenge of a Statement of Performance.

#### *I. Subpart I—Alternative Dispute Resolution*

The Secretary established the Office of Collaborative Action and Dispute Resolution (CADR) in 2001. The Department has embraced alternative dispute resolution as an option in certain circumstances where the parties agree to participate. Adding this subpart to the part 2 regulations reaffirms the Department's commitment to providing another avenue to resolve disputes between the Department and parties.

### **IV. Procedural Requirements**

#### *A. Regulatory Planning and Review (E.O. 12866)*

Executive Orders 12866 and 14094 provide that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant. Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that

reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. This rule is consistent with these requirements.

(1) This rule does not have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities;

(2) This rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) This rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and

(4) This rule does not raise legal or policy issues.

#### *B. Regulatory Flexibility Act*

The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will only affect internal agency processes.

#### *C. Congressional Review Act (CRA)*

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *D. Unfunded Mandates Reform Act of 1995*

This rule would not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information

required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### *E. Takings (E.O. 12630)*

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rulemaking, if adopted, does not affect individual property rights protected by the Fifth Amendment or involve a compensable "taking." A takings implication assessment is not required.

#### *F. Federalism (E.O. 13132)*

Under the criteria in section 1 of Executive Order 13132, this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required because this final rule only affects internal agency processes for appeals of actions taken by officials subordinate to the Assistant Secretary—Indian Affairs.

#### *G. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### *H. Consultation With Indian Tribes (E.O. 13175)*

The Department strives to strengthen its nation-to-nation relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally-recognized Indian Tribes that will result from this rule.

#### *I. Paperwork Reduction Act*

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### *J. National Environmental Policy Act (NEPA)*

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

### *K. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

## **List of Subjects in 25 CFR Part 2**

Administrative practice and procedure, Indians-tribal government.

For the reasons stated in the preamble, the Bureau of Indian Affairs, Department of the Interior, revises 25 CFR part 2 to read as follows:

## **PART 2—APPEALS FROM ADMINISTRATIVE DECISIONS**

### **Subpart A—Purpose, Definitions, and Scope of this Part**

Sec.

- 2.100 What is the purpose of this part?
- 2.101 What terms do I need to know?
- 2.102 What may I appeal under this part?
- 2.103 Are all appeals subject to this part?
- 2.104 How will I know what decisions are appealable under this part?
- 2.105 Who will receive notice of decisions that are appealable under this part?
- 2.106 How does this part comply with the Paperwork Reduction Act?

### **Subpart B—Appealing Administrative Decisions**

- 2.200 Who may appeal a decision?
- 2.201 Do I need a lawyer in order to file a document in an appeal?
- 2.202 Who decides administrative appeals?
- 2.203 How long do I have to file an appeal?
- 2.204 Will the reviewing official grant a request for an extension of time to file a Notice of Appeal?
- 2.205 How do I file a Notice of Appeal?
- 2.206 What must I include in my Notice of Appeal?
- 2.207 Do I have to send the Notice of Appeal to anyone other than the reviewing official?
- 2.208 What must I file in addition to the Notice of Appeal?
- 2.209 Who may file a response to the statement of reasons?
- 2.210 How long does the decision-maker or an interested party have to file a response?

- 2.211 What must a response to the statement of reasons include?
- 2.212 Will the reviewing official accept additional briefings?
- 2.213 What role does the decision-maker have in the appeal process?
- 2.214 What requirements apply to my submission of documents?

### **Subpart C—Effectiveness and Finality of Decisions**

- 2.300 When is a decision effective?
- 2.301 When is a decision a final agency action?

### **Subpart D—Appeal Bonds**

- 2.400 When may the reviewing official require an appeal bond?
- 2.401 How will the reviewing official determine whether to require an appeal bond?
- 2.402 What form of appeal bond will the reviewing official accept?
- 2.403 May I appeal the decision whether to require an appeal bond?
- 2.404 What will happen to my appeal if I fail to post a required appeal bond?
- 2.405 How will the reviewing official notify interested parties of the decision on a request for an appeals bond?

### **Subpart E—Deciding Appeals**

- 2.500 May an appeal be consolidated with other appeals?
- 2.501 May an appealed decision be partially implemented?
- 2.502 May I withdraw my appeal once it has been filed?
- 2.503 May an appeal be dismissed without a decision on the merits?
- 2.504 What information will the reviewing official consider?
- 2.505 When will the reviewing official issue a decision on an appeal?
- 2.506 How does the reviewing official notify the appellant and other interested parties of a decision?
- 2.507 How do I appeal a reviewing official's decision?
- 2.508 May the AS-IA take jurisdiction over an appeal to the IBIA?
- 2.509 May I ask the AS-IA to take jurisdiction over my appeal?
- 2.510 How will the AS-IA handle my appeal?
- 2.511 May the Secretary decide an appeal?
- 2.512 May the Director of the Office of Hearings and Appeals take jurisdiction over a matter?

### **Subpart F—Appealing Inaction of an Agency Official**

- 2.600 May I compel an agency official to take action?
- 2.601 When must a decision-maker respond to a request to act?
- 2.602 What may I do if the decision-maker fails to respond?
- 2.603 How do I submit an appeal of inaction?
- 2.604 What will the next official in the decision-maker's chain of command do in response to my appeal?
- 2.605 May I appeal continued inaction by the decision-maker or the next official in the decision-maker's chain of command?

- 2.606 May I appeal inaction by a reviewing official on an appeal from a decision?
- 2.607 What happens if no official responds to my requests under this subpart?

### **Subpart G—Special Rules Regarding Recognition of Tribal Representatives**

- 2.700 What is the purpose of this subpart?
- 2.701 May a Local Bureau Official's decision to recognize, or decline to recognize, a Tribal representative be appealed?
- 2.702 How will I know what decisions are appealable under this subpart?
- 2.703 How do I file a Notice of Appeal of a Tribal representative recognition decision?
- 2.704 How long do I have to file an appeal of a Tribal representative recognition decision?
- 2.705 Is there anything else I must file?
- 2.706 When must I file my statement of reasons?
- 2.707 May the LBO and interested parties file a response to the statement of reasons?
- 2.708 How long do interested parties have to file a response?
- 2.709 What will the LBO do in response to my appeal?
- 2.710 When will the reviewing official decide a Tribal representative recognition appeal?
- 2.711 May the decision deadline be extended?
- 2.712 May the AS-IA take jurisdiction over the appeal?
- 2.713 May I ask the AS-IA to take jurisdiction over the appeal?
- 2.714 May the reviewing official's decision on Tribal representative recognition be appealed?

### **Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance**

- 2.800 What is the purpose of this subpart?
- 2.801 What terms do I need to know for this subpart?
- 2.802 What must I do if I want to challenge the accuracy of activity within a Statement of Performance?
- 2.803 Is every account holder allowed to challenge the accuracy of activity within a Statement of Performance?
- 2.804 May I challenge the underlying action that generated the proceeds deposited into my account under this subpart?
- 2.805 May I challenge anything other than the activity in the account under this subpart?
- 2.806 What must my Objection to the Statement of Performance contain?
- 2.807 What must my Basis of Objection contain?
- 2.808 To whom must I submit my Objection to the Statement of Performance?
- 2.809 When must I submit my Objection to the Statement of Performance?
- 2.810 Will the decision-maker acknowledge receipt of my Objection to the Statement of Performance?
- 2.811 May I request an extension of time to submit my Objection to the Statement of Performance?
- 2.812 May I appeal the denial of my request for an extension of time?

- 2.813 If I fail to submit either an Objection to the Statement of Performance or the Basis of Objection within the applicable deadlines, what is the consequence?
- 2.814 How long will the decision-maker have to issue a Decision on my Objection to the Statement of Performance?
- 2.815 What information will the Decision on my Objection to the Statement of Performance contain?
- 2.816 May I appeal the Decision on my Objection to the Statement of Performance?
- 2.817 What must my Appeal of the Decision on the Objection to the Statement of Performance contain?
- 2.818 To whom must I submit my Appeal of a Decision on my Objection to the Statement of Performance?
- 2.819 When must my Appeal be filed?
- 2.820 May I submit any other documents in support of my Appeal?
- 2.821 May I request an extension of time to submit my Appeal?
- 2.822 What happens if I do not submit my Appeal within the 30-day deadline?
- 2.823 When will the reviewing official issue the BTFA's ruling?
- 2.824 May I appeal the BTFA's ruling?
- 2.825 When does the Statement of Performance or a Decision become final?

#### Subpart I—Alternative Dispute Resolution

- 2.900 Is there a procedure other than a formal appeal for resolving disputes?
- 2.901 How do I request alternative dispute resolution?
- 2.902 When do I initiate alternative dispute resolution?
- 2.903 What will Indian Affairs do if I request alternative dispute resolution?

**Authority:** 43 U.S.C. 1457; 25 U.S.C. 9; 5 U.S.C. 301.

#### Subpart A—Purpose, Definitions, and Scope of this Part

##### § 2.100 What is the purpose of this part?

If you are adversely affected by certain decisions of a Bureau of Indian Affairs (Bureau) official, you can challenge (appeal) that decision to a higher authority within the Department of the Interior (Department) by following the procedures in this part. Except as otherwise provided in this part or in other applicable laws and regulations, you must exhaust the appeal mechanisms available under this part before you can seek review in a Federal district court under the Administrative Procedure Act (5 U.S.C. 704).

##### § 2.101 What terms do I need to know?

*Administrative record* means all documents and materials that were considered directly or indirectly, or were presented for consideration, in the course of making the decision that is the subject of the appeal.

*Adversely affected* means the decision on appeal has caused or is likely to

cause injury to a legally protected interest.

*Agency* means the Department of the Interior, inclusive of all its offices and bureaus.

*Appeal* means:

- (1) A written request for administrative review of a decision-maker's decision or inaction that is claimed to adversely affect the interested party making the request; or
- (2) The process you must follow when you seek administrative review of a decision-maker's decision or inaction.

*Appellant* means the person or entity who files an appeal.

*AS-IA* means the Assistant Secretary—Indian Affairs, Department of the Interior. AS-IA also means the Principal Deputy Assistant Secretary—Indian Affairs or other official delegated the authority of the AS-IA when the office of the AS-IA is vacant, when the AS-IA is unable to perform the functions of the office, or when the AS-IA is recused from the matter.

*BIA* means the Bureau of Indian Affairs.

*BIE* means the Bureau of Indian Education.

*BTFA* means the Bureau of Trust Funds Administration.

*Days* mean calendar days, unless otherwise provided. Days during which the agency is closed because of a lapse in appropriations do not count as days for purposes of calculating deadlines for actions by Federal officials under this part.

*Decision* means an agency action that permits, approves, or grants permission, requires compliance, or grants or denies requested relief.

*Decision-maker* means the Indian Affairs official whose decision or inaction is being appealed.

*Effective* means that the decision will be implemented by the Department.

*Final agency action* means a decision that represents the consummation of the agency's decision-making process and is subject to judicial review under 5 U.S.C. 704. Final agency actions are immediately effective unless the decision provides otherwise.

*IBIA* means the Interior Board of Indian Appeals within the Office of Hearings and Appeals.

*IED* means the Office of Indian Economic Development.

*Indian Affairs* means all offices and personnel subject to the authority of the AS-IA.

*Interested party* means a person or entity whose legally protected interests are adversely affected by the decision on appeal or may be adversely affected by the decision of the reviewing official.

*Local Bureau Official ("LBO")* means the Superintendent, Field

Representative, or other BIA official who serves as the primary point of contact between BIA and a Tribe or individual Indian.

*Notice of Appeal ("NOA")* means a written document that an appellant files with the reviewing official and serves on the decision-maker and interested parties.

*OIG* means the Office of Indian Gaming.

*OJS* means the Office of Justice Services.

*OSG* means the Office of Self Governance.

*Participant* means the appellant, any interested party who files a response as provided for in § 2.209, and any Tribe that is an interested party.

*Person* means an individual human being or other entity.

*Reviewing official* means an Indian Affairs official who is authorized to review and issue decisions on appeals filed under this part, and the IBIA, unless otherwise provided in this part.

*Trust Asset* means trust lands, natural resources, trust funds, or other assets held by the Federal Government in trust for Indian Tribes and individual Indians.

*We, us, and our*, mean the officers and employees of Indian Affairs.

*You* (in the text of each section) and *I* (in the section headings) mean an interested party who is considering, pursuing, or participating in an administrative appeal as provided for in this part.

##### § 2.102 What may I appeal under this part?

(a) Subject to the exceptions in this part and other applicable law or regulation, you may appeal:

(1) Any discrete, written decision made by a decision-maker that adversely affects you, including a determination by the decision-maker that she or he lacks either the duty or authority to take the action that you have requested; and

(2) Inaction by Indian Affairs officials by following the procedures in subpart F of this part.

(b) You may not appeal in the following circumstances.

(1) You may not separately appeal the issuance of component documents of the administrative record, including, but not limited to, appraisals or market studies, reports, studies, investigations, notices of impoundment or public sale, recommendations, or National Environmental Policy Act documents. The adequacy of these types of documents cannot be challenged unless and until an appealable decision is made in reliance upon these documents.

(2) You may not appeal an agency's notification to you that it is pursuing or



is considering pursuing action against you in Federal district court, unless separate regulations in this title require you to follow administrative appeal procedures in accordance with this part or other regulations such as those listed in § 2.103 to appeal the notification. Such notifications include, but are not limited to, notices that could lead the agency to pursue actions for money damages against you, such as actions for trespass, ejectment, eviction, nuisance, conversion, or waste to Indian land

under the Federal common law or statute.

(3) You may not appeal final agency actions (though you may be able to seek review in Federal district court).

(c) Any challenge to preliminary, procedural, or intermediate actions by a reviewing official must be submitted to the reviewing official prior to that official's issuing the decision. The reviewing official will address such challenges in the final decision. Such a challenge is not a separate appeal.

### § 2.103 Are all appeals subject to this part?

Not all appeals are subject to this part. Decisions by some Indian Affairs officials may be appealed to the Interior Board of Indian Appeals, subject to the regulations at 43 CFR part 4. Other regulations govern appeals of administrative decisions regarding certain topics. Table 1 to this section lists some decision topics that are subject to different appeals regulations, in whole or in part, and where to find those regulations.

TABLE 1 TO § 2.103

For appeal rights related to . . .	Refer to . . .
Access to student records .....	25 CFR part 43.
Acknowledgment as a federally recognized Indian Tribe .....	25 CFR part 83.
Adverse employment decisions against Bureau of Indian Affairs employees .....	43 CFR part 20.
Any decision by a Court of Indian Offenses .....	25 CFR part 11.
Appointment or termination of contract educators .....	25 CFR part 38.
Debts owed by Federal employees .....	5 CFR part 550.
Determination of heirs, approval of wills, and probate proceedings .....	43 CFR part 4; 43 CFR part 30; 25 CFR part 16; 25 CFR part 17.
Indian School Equalization Program student count .....	25 CFR part 39.
Eligibility determinations for adult care assistance, burial assistance, child assistance, disaster, emergency and general assistance, and the Tribal work experience program .....	25 CFR part 20.
Certain adverse enrollment decisions .....	25 CFR part 62.
Freedom of Information Act requests .....	43 CFR part 2.
Grazing permits for trust or restricted lands .....	25 CFR part 166.
Indian Reservation Roads Program funding .....	25 CFR part 170.
Leasing of trust or restricted lands .....	25 CFR part 162.
Matters subject to the Contract Disputes Act .....	48 CFR part 33; 48 CFR part 6101.
Privacy Act requests .....	43 CFR part 2.
Restricting an Individual Indian Money account .....	25 CFR part 115.
Rights-of-way over or across trust or restricted lands .....	25 CFR part 169.
Secretarial elections .....	25 CFR part 81.
Self-Determination contracts .....	25 CFR part 900.
Self-Governance compacts .....	25 CFR part 1000.
Student rights and due process .....	25 CFR part 42.
Tribally controlled colleges and universities .....	25 CFR part 41.
Departmental quarters .....	41 CFR part 114.

### § 2.104 How will I know what decisions are appealable under this part?

(a) When an Indian Affairs official makes a decision that is subject to an appeal under this part, she or he will transmit the decision to interested parties by U.S. Mail or, upon request, by electronic mail. Unless the decision is immediately effective, and except for decisions that are subject to appeal to IBIA, the official will include the following notice of appeal rights at the end of the decision document:

This decision may be appealed by any person or entity who is adversely affected by the decision. Appeals must be submitted to the—[appropriate reviewing official]—at—[address, including email address]. The appeals process begins when you file with the reviewing official a notice of appeal, complying with the provisions of 25 CFR 2.205–2.207.

**Deadline for Appeal.** Your notice of appeal must be submitted in accordance with the provisions of 25 CFR 2.214 within 30 days of the date you receive notice of this decision pursuant to 25 CFR 2.203. If you do not file a timely appeal, you will have failed to exhaust administrative remedies as required by 25 CFR part 2. If no appeal is timely filed, this decision will become effective at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

**Appeal Contents and Packaging.** Your notice of appeal must comply with the requirements in 25 CFR 2.214. It must clearly identify the decision being appealed. If possible, attach a copy of this decision letter. The notice and the envelope in which it is mailed should be clearly labeled, “Notice of Appeal.” If electronic filing is available, “Notice of Appeal” must appear in the subject line of the email submission. Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them and

this office copies of the notice by any of the mechanisms permitted for transmitting the NOA to the BIA.

**Where to Send Copies of Your Appeal.** [For appeals to IA officials, not IBIA]: In addition to sending your appeal to—[the reviewing official],—you must send a copy of your appeal to this office at the address on the letterhead—[if an email address is included in the letterhead, you may submit your appeals documents via email, with “Notice of Appeal” in the subject line of the email submission].

[For appeals to the IBIA]: If the reviewing official is the IBIA, you must also send a copy of your appeal to the AS-IA and to the Associate Solicitor, Division of Indian Affairs. If the reviewing official is the IBIA, your appeal will be governed by the IBIA's regulations, at 43 CFR part 4.

**Assistance.** If you can establish that you are an enrolled member of a federally recognized Tribe and you are not represented by an attorney, you may, within 10 days of receipt of this decision, request assistance



from this office in the preparation of your appeal. Our assistance is limited to serving your filings on the interested parties and allowing limited access to government records and other documents in the possession of this office. We cannot obtain an attorney for you or act as your attorney on the merits of the appeal.

(b) If a decision-maker issues a decision that does not include notice of appeal rights, the decision-maker will provide written notice of appeal rights and the decision may be appealed as follows:

(1) If the decision-maker discovers within 30 days of issuing the decision that the decision did not include notice of appeal rights, then the decision-maker will provide written notice of appeal rights to interested parties, and inform them that they may appeal the decision within 30 days from the date of receipt of the notice. If no appeal is filed by the new deadline, the interested parties will have failed to exhaust administrative remedies as required by this part and the decision will become effective.

(2) If the decision-maker does not discover within 30 days of issuing the decision that the decision did not include notice of appeal rights and no administrative appeal is filed within 30 days of the issuance of the decision, then the decision becomes effective 31 days after it was issued.

(3) If the decision-maker discovers, more than 30 days but less than 365 days, after the date of the decision that the decision did not include notice of appeal rights, then the decision-maker will immediately notify the interested parties that the decision was issued without the requisite notice of appeal rights. If the decision has not actually been implemented, the decision-maker shall stay the implementation of the decision and reissue the decision with the appeal rights notice as provided in this section. If the decision has been implemented, the decision maker shall notify the interested parties of that fact, and notify them that they may file a challenge to the decision in Federal court, or pursue the administrative appeal process set out in this section.

**§ 2.105 Who will receive notice of decisions that are appealable under this part?**

Except as provided in other regulations governing specific types of decisions (see § 2.103), the decision-maker will transmit a copy of all appealable decisions to all known interested parties at the addresses the decision-maker has on file for them.

**§ 2.106 How does this part comply with the Paperwork Reduction Act?**

The information collected from the public under this part is cleared and

covered by Office of Management and Budget (OMB) Control Number 1076–NEW. Please note that a Federal Agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Subpart B—Appealing Administrative Decisions**

**§ 2.200 Who may appeal a decision?**

You have a right to appeal a decision made by an Indian Affairs official if you can show, through credible statements, that you are adversely affected by the decision.

**§ 2.201 Do I need a lawyer in order to file a document in an appeal?**

No. You may represent yourself. If you are represented by someone else, your representative must meet the standards established in 43 CFR part 1 and must provide documentation of his or her authority to act on your behalf.

**§ 2.202 Who decides administrative appeals?**

Except where a specific section of this part sets out a different appellate hierarchy, table 1 to this section identifies the reviewing officials for appeals under this part:

TABLE 1 TO § 2.202

Official issuing the decision	Reviewing official or IBIA
Agency Superintendent or Field Representative, BIA .....	Regional Director, BIA.
Regional Director, BIA .....	IBIA.
District Commander, OLES .....	Deputy Director BIA, Office of Justice Services (OJS).
Deputy Director, BIA .....	Director, BIA.
Director, BIA .....	IBIA.
Principal of a Bureau operated School .....	Education Program Administrator.
Education Program Administrator .....	Associate Deputy Director, BIE.
Associate Deputy Director, BIE .....	Director, BIE.
President of a Bureau operated Post-Secondary School .....	Director, BIE.
Director, BIE .....	AS–IA.
BTFA decision-maker .....	Director, BTFA.
Director of: OIG; IED; OSG .....	Appropriate Deputy Assistant Secretary—Indian Affairs.
Deputy Assistant Secretary—Indian Affairs; Director, BTFA .....	AS–IA.

**§ 2.203 How long do I have to file an appeal?**

(a) You have 30 days after you receive a copy of the decision you are appealing to file a Notice of Appeal, except as provided in § 2.104(b).

(b) We will presume that you have received notice of the decision 10 days after the date that the decision was mailed to you, if the decision-maker mailed the document to the last address the decision-maker has on file for you.

(c) If the reviewing official receives proof that the document was delivered

before the expiration of the 10-day period, you are presumed to have received notice on the date of delivery, and you have 30 days from that date to file an appeal.

**§ 2.204 Will the reviewing official grant a request for an extension of time to file a Notice of Appeal?**

No. No extensions of time to file a Notice of Appeal will be granted.

**§ 2.205 How do I file a Notice of Appeal?**

(a) To file a Notice of Appeal to an Indian Affairs official, you must submit

the Notice of Appeal to the reviewing official identified in the decision document's notice of appeal rights, as prescribed in § 2.104. Your submission must comply with § 2.214.

(b) If you are appealing to the IBIA, you must comply with IBIA's regulations, set out at 43 CFR part 4.

**§ 2.206 What must I include in my Notice of Appeal?**

In addition to meeting the requirements of § 2.214, your Notice of Appeal must include an explanation of how you satisfy the requirements of

standing set out in § 2.200 and a copy of the decision being appealed, if possible.

**§ 2.207 Do I have to send the Notice of Appeal to anyone other than the reviewing official?**

(a) Yes. You must provide copies of your Notice of Appeal to the decision-maker and all interested parties known to you. If you are an individual Indian and are not represented by an attorney, you may request that we make the copies for you and mail your appeal documents to all interested parties.

(b) If you are appealing to the IBIA, you must also send a copy of your Notice of Appeal to the AS-IA and to the Associate Solicitor for Indian Affairs at the same time you send the appeal to the IBIA.

**§ 2.208 What must I file in addition to the Notice of Appeal?**

No later than 10 days after filing your Notice of Appeal, you must submit to the reviewing official, the decision-maker, and interested parties a statement of reasons that:

- (a) Explains why you believe the decision was wrong;
- (b) Identifies relevant information or evidence you believe the decision-maker failed to consider;
- (c) Describes the relief you seek;
- (d) Provides all documentation you believe supports your arguments; and
- (e) Complies with the requirements of § 2.214.

**§ 2.209 Who may file a response to the statement of reasons?**

Any interested party may file a response to the statement of reasons, thereby becoming a participant. The decision-maker may also file a response to the statement of reasons.

**§ 2.210 How long does the decision-maker or an interested party have to file a response?**

The decision-maker or an interested party has 30 days after receiving a copy of the statement of reasons to file a response.

**§ 2.211 What must a response to the statement of reasons include?**

(a) A response to a statement of reasons must comply with § 2.214. In addition, the response must:

- (1) State when the interested party or decision-maker submitting the response received the statement of reasons;
- (2) Explain how the interested party submitting the response is adversely affected by the decision being appealed or may be adversely affected by the reviewing official's decision; and
- (3) Explain why the interested party or decision maker submitting the

response believes the arguments made in the appellant's Notice of Appeal and statement of reasons are right or wrong.

(b) The response may also include statements and documents supporting the position of the interested party or decision-maker submitting.

**§ 2.212 Will the reviewing official accept additional briefings?**

(a) Yes. The appellant may file a reply with the reviewing official within 21 days of receiving a copy of any response brief.

(b) Any interested party may, within 10 days after receiving the table of contents of the administrative record (AR), request copies of some or all of the AR. Such party may submit a supplemental brief within 10 days after receiving the requested documents.

(c) Any interested party may ask the reviewing official for permission to file additional briefing. The reviewing official's decision on whether to grant the request is not appealable.

(d) No documents other than those specified in this part and those permitted by the reviewing official under paragraph (c) of this section may be filed.

(e) The reviewing official will not consider documents not timely filed.

**§ 2.213 What role does the decision-maker have in the appeal process?**

(a) The decision-maker is responsible for:

- (1) Compiling the administrative record;
- (2) Sending the administrative record to the reviewing official within 20 days of the decision-maker's receipt of the Notice of Appeal; and
- (3) Making available a copy of the administrative record for review by interested parties. When the decision-maker transmits the administrative record to the reviewing official, the decision-maker shall transmit to the interested parties a copy of the table of contents of the administrative record. Interested parties may view the administrative record at the office of the decision-maker. Interested parties may request copies of all or part of the administrative record. Where reproduction and transmission of the administrative record imposes costs on BIA exceeding \$50, BIA may charge the requestor for those costs. BIA shall not incur such costs without the requestor's approval. The decision-maker shall respond to requests for documents in the administrative record within 30 days of receipt of the request, either by providing the requested documents or identifying a date by which the documents shall be provided. The

decision-maker shall redact the documents provided to the requestor as required by law (e.g., the Privacy Act). The decision-maker may withhold information in the administrative record, invoking privileges available in civil litigation; such withholding being subject to judicial review. Provision of documents in the administrative record to an interested party under this part is not governed by the Freedom of Information Act. Failure of a decision-maker to respond to a request for documents under this section may be appealed as provided in subpart F of this part.

(b) If a decision-maker believes that a compacting or contracting Tribe possesses Federal records that are relevant to the analysis of the appeal, the decision-maker may request that the Tribe produce the documents. Within two weeks of receiving the decision-maker's request, the Tribe shall either provide the requested documents to the decision-maker or explain why it is not providing the documents. This section does not apply to Tribal records. See 25 U.S.C. 5329(b).

(c) The decision-maker may file a response to the statement of reasons.

**§ 2.214 What requirements apply to my submission of documents?**

Except where a section in this part (or 43 CFR part 4 with respect to submissions to the IBIA) sets out other requirements, you must comply with the following provisions:

(a) *Information required in every submission.* (1) The submitter's contact information, consisting of name, mailing address, telephone number, and email address if any; or the name, mailing address, telephone number, and email address of the submitter's representative;

(2) A certificate of service by the submitter that the submission was served on all interested parties known to the submitter, a list of parties served, and the date and method of service; and

(3) The signature of the interested party or his or her representative.

(b) *Filing documents.* A document is properly filed with an agency official by:

(1) Personal delivery, either hand delivery by an interested party or via private mail carrier, during regular business hours to the person designated to receive mail in the immediate office of the official;

(2) United States mail to the facility officially designated for receipt of mail addressed to the official. The document is considered filed by mail on the date that it is postmarked; and

(3) Electronic mail (email) is permissible only in accordance with the provisions in paragraph (i) of this section.

(c) *Service generally.* A copy of each document filed in a proceeding under this part must be served by the filing party on the relevant agency official(s) and all other known interested parties. If an interested party is represented by an attorney, service of any document shall be made upon such attorney. Where an interested party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(d) *Record address.* Every person who files a document in an appeal shall, at the time of the initial filing in the matter, provide his or her contact information. Such person must promptly inform the decision-maker or reviewing official of any change in address. Any successors in interest of such person shall promptly inform the decision-maker or reviewing official of his or her interest in the matter and provide contact information. Agency officials and other parties to an appeal shall have fulfilled their service requirement by transmitting documents to a party's last known address.

(e) *Computation of time for filing and service.* Documents must be filed within the deadlines established in this part (or by 43 CFR part 4 for filings submitted to the IBIA), or as established by Department officials in a particular matter. Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served, or the day of any other event after which the designated period of time begins to run, is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other day on which the office to which the document is addressed is not conducting business, in which event the period runs until the end of the next day on which the office to which the document is addressed is conducting business. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days shall be excluded in the computation.

(f) *Extensions of time.* (1) The deadline for filing and serving any document may be extended by the agency official before whom the proceeding is pending, except that the deadline for filing a Notice of Appeal may not be extended.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document.

(3) A request for extension of time must be filed with the same office as the document that is the subject of the request.

(g) *Formatting.* All submissions, except exhibits, must be typed in 12-point font, (double-spaced) using a standard 8½- by 11-inch word processing format, except that a document submitted by an interested party who is not represented by an attorney may be hand-written. An agency official may decline to consider an illegible hand-written submission. An agency official who declines to consider a hand-written submission shall promptly notify the submitter of the decision not to consider the submission.

(h) *Page limits for particular filings are set out in the sections addressing those filings.* Attachments and exhibits not drafted by or for the submitter do not count toward the page limit.

(i) *Submitting and serving documents by email.* Submitting documents by email to an agency official is only permitted when the receiving official has notified the known interested parties that email submissions are acceptable. Documents may only be served via email on interested parties who have stated, in writing, their willingness to accept service by email. No single email submission may exceed 10 megabytes (MB). Submissions may be divided into separate emails for purposes of complying with this requirement. Filings submitted by email shall be in PDF format. Email submissions that arrive at the agency official's office after 5:00 p.m. shall be deemed to have arrived on the next work day.

(j) *Non-compliant submissions.* An agency official may decline to consider a submission that does not comply with the requirements in this section, or take other action she/he deems appropriate. A non-compliant submission is nonetheless a Federal record, and must be preserved as other Federal records.

### Subpart C—Effectiveness and Finality of Decisions

#### § 2.300 When is a decision effective?

(a) Agency decisions that are subject to further administrative appeal become effective when the appeal period expires without an appeal being filed, except as provided elsewhere in this chapter.

(b) When an agency decision is effective pursuant to paragraph (c) of this section or § 2.714, the administrative appeal will proceed

unless an interested party challenges the agency decision in Federal court.

(c) Agency decisions that are subject to further administrative appeal and for which an appeal is timely filed may be made immediately effective by the reviewing official based on public safety, Indian education safety, protection of trust resources, or other public exigency.

(1) A decision-maker whose decision has been appealed may ask the reviewing official to make the appealed decision immediately effective or the reviewing official may make the appealed decision immediately effective on his or her own initiative.

(2) A reviewing official's decision to make an appealed decision immediately effective must explain why public safety, Indian education safety, protection of trust resources, or other public exigency justifies making the decision immediately effective. Any challenge to the decision to put an appealed decision into immediate effect shall be incorporated into the ongoing appeal.

(3) A decision by a reviewing official (other than the IBIA) to place an appealed decision into immediate effect must be in writing and include the following notice of appeal rights:

As explained above, based on concerns about public safety, Indian education safety, protection of trust resources, or other exigency, I have placed the challenged decision into immediate effect, as authorized by 25 CFR 2.300. I will continue with my review of the matter on appeal unless and until an interested party files suit in federal court challenging the agency decision.

#### § 2.301 When is a decision a final agency action?

An agency decision that is not subject to administrative appeal is a final agency action and immediately effective when issued unless the decision provides otherwise.

### Subpart D—Appeal Bonds

#### § 2.400 When may the reviewing official require an appeal bond?

(a) Any interested party who may suffer a financial loss or damage to Indian Trust Assets as a result of an appeal may ask the reviewing official to require the appellant to post an appeal bond.

(b) The reviewing official may decide on his or her own initiative to require an appeal bond in accordance with this subpart.

#### § 2.401 How will the reviewing official determine whether to require an appeal bond?

The reviewing official may require an appeal bond if the party requesting the

appeal bond can demonstrate that the delay caused by the appeal may result in a measurable and substantial financial loss or damage to Indian Trust Assets. The amount of the appeal bond will be commensurate with the estimated financial loss or damage to Indian Trust Assets.

**§ 2.402 What form of appeal bond will the reviewing official accept?**

The reviewing official will only accept an appeal bond that has a market value at least equal to the total bond amount in one, or a combination of, the following forms.

(a) Negotiable U.S. Treasury securities, accompanied by a statement granting the AS-IA full authority to sell the securities and direct the proceeds to the party who was harmed by the appellant's unsuccessful appeal.

(b) Certificates of deposit that indicate on their face that AS-IA approval is required prior to redemption by any party.

(c) An irrevocable letter of credit issued by a federally insured financial institution and made payable to the Office of the AS-IA. The letter of credit must have an initial expiration date of not less than two years from the date of issuance and be automatically renewable for at least one year.

(d) A surety bond issued by a company approved by the U.S. Department of the Treasury.

**§ 2.403 May I appeal the decision whether to require an appeal bond?**

No. The reviewing official's decision whether to require an appeal bond is not appealable.

**§ 2.404 What will happen to my appeal if I fail to post a required appeal bond?**

If you are required to post a bond and fail to do so within the time allowed by the reviewing official to post the bond, the reviewing official will dismiss your appeal.

**§ 2.405 How will the reviewing official notify interested parties of the decision on a request for an appeals bond?**

When the reviewing official decides whether to require an appeal bond, she or he will provide the interested parties with written notice of the decision.

**Subpart E—Deciding Appeals**

**§ 2.500 May an appeal be consolidated with other appeals?**

Yes. The reviewing official may, either on his or her own initiative or upon request by the decision-maker or interested party, consolidate identical or similar appeals filed by you and others or consolidate multiple appeals that you

file that also contain identical or similar issues.

**§ 2.501 May an appealed decision be partially implemented?**

Yes. The reviewing official may identify any parts of a decision-maker's decision that have not been appealed, to allow the decision-maker to implement those parts of the decision. The reviewing official will notify interested parties of a determination to implement unchallenged components of the decision-maker's decision. An interested party who disagrees with the reviewing official's determination may seek reconsideration by the reviewing official. A request for reconsideration must be filed within 15 days of issuance of the determination.

**§ 2.502 May I withdraw my appeal once it has been filed?**

Yes. You may withdraw your appeal at any time before the reviewing official issues a decision. To withdraw an appeal, you must write to the reviewing official and all participants stating that you want to withdraw your appeal. If you withdraw your appeal, it will be dismissed by the reviewing official. While the dismissal of a withdrawn appeal is without prejudice, the appeals time frame set out in this part will be unaffected by a withdrawn appeal. Therefore, any refiling of a withdrawn appeal must be within the original filing deadline established pursuant to § 2.104.

**§ 2.503 May an appeal be dismissed without a decision on the merits?**

Yes, the reviewing official may dismiss an appeal without a decision on the merits when:

- (a) You are late in filing your appeal;
- (b) You lack standing because you do not meet the requirements of § 2.200 for bringing an appeal;
- (c) You have withdrawn the appeal;
- (d) You have failed to pay a required appeal bond;
- (e) The reviewing official lacks the authority to grant the requested relief;
- (f) If you are represented and your representative does not meet the standards established in 43 CFR part 1 related to eligibility to practice before the Department, and you have failed to substitute yourself or an eligible representative after being given an opportunity to do so; or

(g) The reviewing official determines there are other circumstances that warrant a dismissal and explains those circumstances in the dismissal order.

**§ 2.504 What information will the reviewing official consider?**

(a) The reviewing official will consider:

- (1) The administrative record for the decision, prepared by the decision-maker under § 2.213;
- (2) All relevant documents submitted by the decision-maker and participants that were filed in accordance with applicable deadlines; and
- (3) Laws, regulations, Secretarial Orders, Solicitor's Opinions, policies, implementing guidance, and prior judicial and administrative decisions that are relevant to the appeal.

(b) If the reviewing official considers documentation that was not included in the administrative record, the reviewing official will:

- (1) Provide a copy of that documentation to the decision-maker and interested parties; and
- (2) Establish a schedule for the decision-maker and interested parties to review and comment on the documentation.

**§ 2.505 When will the reviewing official issue a decision on an appeal?**

(a) The reviewing official (other than the IBIA) will issue a written decision, including the basis for the decision, within 90 days after the latest of:

- (1) The filing of the statement of reasons;
- (2) The filing of any responses, replies, or supplemental briefs under §§ 2.209 through 2.212; or
- (3) The filing of any comments on additional material under § 2.504(b).

(b) A reviewing official (other than the IBIA) may, for good cause and with notice to the decision-maker and participants, extend the deadline for the official's decision one time by no more than 90 days.

**§ 2.506 How does the reviewing official notify the appellant and other interested parties of a decision?**

The reviewing official will send the decision to the decision-maker and interested parties.

**§ 2.507 How do I appeal a reviewing official's decision?**

(a) To appeal a reviewing official's decision that is not a final agency action, you must file your appeal in accordance with the instructions for appeal contained in the decision.

(b) The decision will include instructions that briefly describe how to appeal the decision, to whom the appeal should be directed, and the deadline for filing an appeal, and will refer interested parties to the regulations governing the appeal.

(c) If you are appealing to the IBIA, you must comply with IBIA's regulations, set out at 43 CFR part 4.

(d) Except where a specific section of this part sets out a different appellate hierarchy, table 1 to this paragraph (d)

indicates the official to whom subsequent appeals should be addressed.

TABLE 1 TO PARAGRAPH (d)

Reviewing official (or IBIA) whose decision is being appealed	Official to whom the appeal is addressed
Regional Director .....	IBIA.
Principal of a Bureau operated school .....	Education Program Administrator.
Education Program Administrator .....	Associate Deputy Director, Bureau of Indian Education.
Associate Deputy Director, BIE .....	Director, BIE.
President of a Bureau operated post-secondary school .....	Director, BIE.
Deputy Director BIA, Office of Justice Services (OJS) .....	IBIA.
Director, BIE .....	AS-IA.
Director, BTFA .....	AS-IA.
Director, BIA .....	IBIA.
Deputy Assistant Secretary—Indian Affairs .....	AS-IA.
AS-IA .....	(Decision is final for the Department).
IBIA .....	(Decision is final for the Department).

#### **§ 2.508 May the AS-IA take jurisdiction over an appeal to the IBIA?**

Yes. The AS-IA has 40 days from the date on which the IBIA received your Notice of Appeal to take jurisdiction from the IBIA. The AS-IA will notify the IBIA in writing of the assumption of jurisdiction and request the administrative record of the appeal. At any time in the 40 days, the AS-IA may notify the IBIA that she or he is not going to take jurisdiction over an appeal, at which point the IBIA will assign a docket number to the appeal under its regulations in 43 CFR part 4. If the IBIA does not receive written notice from the AS-IA within the 40-day period of the AS-IA's intent to take jurisdiction over the appeal, the IBIA will assign a docket number to your appeal.

#### **§ 2.509 May I ask the AS-IA to take jurisdiction over my appeal?**

No. The AS-IA will not consider a request from any interested party to take jurisdiction over an appeal.

#### **§ 2.510 How will the AS-IA handle my appeal?**

If the AS-IA takes jurisdiction over your appeal, or if an appeal is made to the AS-IA in accordance with table 1 to paragraph (d) in § 2.507, the following procedures shall apply:

(a) Within 10 days of receipt of an appeal, or of assumption of jurisdiction over an appeal to the IBIA, the AS-IA shall transmit to the official who issued the decision being appealed and all known interested parties a notice that will include information on when and how to file briefs, access to the administrative record, and may include instructions for filing briefs via email.

(b) Briefs shall comply with § 2.214, and be submitted as follows, unless the AS-IA specifies otherwise:

(1) Initial briefs are invited from the appellant, all interested parties, and the official whose decision is on appeal. Initial briefs may not exceed 30 pages and shall be due within 21 days of the date of the AS-IA's notice. Initial briefs must include certification of service on the reviewing official and all other interested parties identified in the AS-IA's initial notice to interested parties;

(2) Answering briefs shall be due within 35 days of the date of the AS-IA's notice. Answering briefs shall not exceed 15 pages; and

(3) For good cause shown, the AS-IA may extend deadlines, may allow handwritten briefs, may provide for different page limits, and may permit submission of reply briefs.

(c) The AS-IA shall render a decision on the appeal within 60 days of the end of briefing. The AS-IA may, for good cause and with notice to the participants, extend the deadline for issuing a decision by no more than 60 days.

(d) The AS-IA may summarily affirm the decision of the official whose decision is on appeal based on the record before the official whose decision is on appeal.

(e) The AS-IA may delegate to the Principal Deputy Assistant Secretary—Indian Affairs the authority and responsibility for rendering a final agency decision on an appeal over which the AS-IA is exercising jurisdiction.

#### **§ 2.511 May the Secretary decide an appeal?**

Yes. Nothing in this part will be construed as affecting the Secretary's authority to take jurisdiction over an appeal as set out in 43 CFR 4.5(a).

#### **§ 2.512 May the Director of the Office of Hearings and Appeals take jurisdiction over a matter?**

Yes. Nothing in this part will be construed as affecting the authority vested in the Director of the Office of Hearings and Appeals to take jurisdiction over matters in front of the IBIA, as provided in 43 CFR 4.5(b).

#### **Subpart F—Appealing Inaction of an Agency Official**

#### **§ 2.600 May I compel an agency official to take action?**

(a) Yes. If a decision-maker fails to take action on a written request for action that you believe the decision-maker is required to take, you may make the decision-maker's inaction the subject of appeal.

(b) Before filing an appeal with the next official in the decision-maker's chain of command, you must:

(1) Send a written request to the decision-maker, asking that he or she take the action originally asked of him or her;

(2) Identify the statute, regulation, or other source of law that you believe requires the decision-maker to take the action being requested;

(3) Describe the interest adversely affected by the decision-maker's inaction, including a description of the loss, impairment or impediment of such interest caused by the inaction; and

(4) State that, unless the decision-maker either takes action on the written request within 15 days of receipt of your request, or establishes a date by which a decision will be made, you will appeal the decision-maker's inaction in accordance with this subpart.

(c) You must include a copy of your original request to the decision-maker, or other documentation establishing the date and nature of the original request.

**§ 2.601 When must a decision-maker respond to a request to act?**

A decision-maker receiving a request as specified in § 2.600 has 15 days from receiving the request to issue a written response. The response may be a decision, a procedural order that will further the decision-making process, or a written notice that a decision will be rendered by a date no later than 60 days from the date of the request.

**§ 2.602 What may I do if the decision-maker fails to respond?**

If the decision-maker does not respond as provided for in § 2.601, you may appeal the decision-maker's continued inaction to the next official in the decision-maker's chain of command. For purposes of this subpart:

(a) BIA's chain of command is as follows:

- (1) Local Bureau Official;
- (2) Regional Director (find addresses on the Indian Affairs website, currently at <https://www.bia.gov/regional-offices>);
- (3) Director, Bureau of Indian Affairs (1849 C Street NW, MS 4606, Washington, DC 20240); and
- (4) Assistant Secretary—Indian Affairs (1849 C Street NW, MS 4660, Washington, DC 20240).

(b) BIE's chain of command is as follows:

- (1) Principal of Bureau-operated school;
- (2) Education Program Administrator;
- (3) Associate Deputy Director, BIE;
- (4) Director, BIE; and
- (5) AS-IA.

(c) The Office of Justice Services' chain of command is as follows:

- (1) Deputy Director BIA, Office of Justice Services;
- (2) Director, BIA; and
- (3) AS-IA

(d) You may appeal inaction by an official within the Office of the AS-IA to the AS-IA.

**§ 2.603 How do I submit an appeal of inaction?**

You may appeal the inaction of a decision-maker by sending a written "appeal from inaction of an official" to the next official in the decision-maker's chain of command. You must enclose a copy of the original request for decision to which the decision-maker has not responded and a copy of the request for decision that you sent to the decision-maker pursuant to § 2.600. If filing by email is permitted, "Appeal of Inaction" must appear in the subject line of the email submission.

**§ 2.604 What will the next official in the decision-maker's chain of command do in response to my appeal?**

An official who receives an appeal from the inaction of a decision-maker

that complies with the requirements of this subpart will, within 15 days of receiving the appeal, formally direct the decision-maker to respond within 15 days of the decision-maker's receipt of the official direction. The official will send to all interested parties a copy of his or her instructions to the decision-maker.

**§ 2.605 May I appeal continued inaction by the decision-maker or the next official in the decision-maker's chain of command?**

Yes. If the official fails to timely direct the decision-maker to respond to the request for decision, or if the decision-maker fails to respond within the time frame identified by the official pursuant to § 2.604, you may appeal the continued inaction by either agency official to the next highest officer in the chain of command above both agency officials. Your appeal must be submitted as provided for in §§ 2.602 and 2.603. The official will respond as provided for in § 2.604.

**§ 2.606 May I appeal inaction by a reviewing official on an appeal from a decision?**

(a) Yes. If a reviewing official fails to take action on the appeal within the timeframes established in § 2.505, any interested party may appeal the reviewing official's inaction as provided for in this subpart.

(b) Inaction by the IBIA or by the AS-IA is not subject to appeal under this part.

**§ 2.607 What happens if no official responds to my requests under this subpart?**

If you exhaust all the provisions of this subpart and the Department has still not taken action on your request, the Department's inaction may be subject to judicial review pursuant to 5 U.S.C. 706(1).

**Subpart G—Special Rules Regarding Recognition of Tribal Representative****§ 2.700 What is the purpose of this subpart?**

The purpose of this subpart is to expedite administrative review of a Bureau decision to recognize, or to decline to recognize, a Tribal representative. Provisions in subparts A through F of this part also apply, except that, if a provision in this subpart conflicts with a provision in subparts A through F of this part, the provision in this subpart will govern.

**§ 2.701 May a Local Bureau Official's decision to recognize, or decline to recognize, a Tribal representative be appealed?**

Yes. A written decision by the LBO to recognize or decline to recognize a Tribal representative is appealable.

**§ 2.702 How will I know what decisions are appealable under this subpart?**

When an LBO issues a Tribal representative recognition decision, the official will include the following notice of appeal rights at the end of the decision document:

YOU HAVE 10 DAYS TO APPEAL THIS DECISION.

This decision may be appealed to the —[appropriate reviewing official. If the LBO is a Regional Director, the reviewing official is the Director of the BIA]—at—[address, including email address if filing by email is permitted].

*Deadline for Appeal.* Your notice of appeal must be submitted as provided for in 25 CFR 2.214 within 10 (ten) days of the date you receive notice of this decision. Your notice of appeal must explain how you satisfy the standing requirements in 25 CFR 2.200. If you do not file a timely appeal, you will have failed to exhaust administrative remedies required by these regulations. If no appeal is timely filed, this decision will become effective at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

**§ 2.703 How do I file a Notice of Appeal of a Tribal representative recognition decision?**

To file a Notice of Appeal, you must submit, as provided in § 2.214, the Notice of Appeal to the reviewing official identified in the decision document's notice of appeal rights, as prescribed in § 2.702.

**§ 2.704 How long do I have to file an appeal of a Tribal representative recognition decision?**

You have 10 days after you receive the Tribal representative recognition decision to file a Notice of Appeal.

**§ 2.705 Is there anything else I must file?**

Yes. You must file a statement of reasons setting out your arguments in support of your appeal, and include any supporting documentation you wish to present to the reviewing official. Your statement of reasons must comply with the requirements set out in § 2.214.

**§ 2.706 When must I file my statement of reasons?**

You must submit your statement of reasons to the reviewing official and interested parties no later than 10 days after filing your Notice of Appeal.

**§ 2.707 May the LBO and interested parties file a response to the statement of reasons?**

Yes. Any interested party, as well as the LBO, may file a response to the statement of reasons, thereby becoming a participant.

**§ 2.708 How long do interested parties have to file a response?**

(a) The LBO and any interested party have 10 days after receiving a copy of the statement of reasons to file a response, which must be served on the appellant, the LBO and other interested parties.

(b) For good cause shown, the reviewing official may allow the appellant to file a reply brief.

**§ 2.709 What will the LBO do in response to my appeal?**

Upon receipt of your Notice of Appeal, the LBO must transmit, within 15 days, the administrative record to the reviewing official and transmit your Notice of Appeal to the AS-IA.

**§ 2.710 When will the reviewing official decide a Tribal representative recognition appeal?**

The reviewing official will issue a written decision, including the basis for the decision, within 30 days after the latest of the filing of your statement of reasons or interested parties' response.

**§ 2.711 May the decision deadline be extended?**

Yes. A reviewing official may, for good cause and with notice to the interested parties and the LBO, extend the deadline for the reviewing official's decision one time, for no more than an additional 30 days.

**§ 2.712 May the AS-IA take jurisdiction over the appeal?**

Yes. The AS-IA may take jurisdiction over the appeal at any time before the reviewing official issues a final decision.

**§ 2.713 May I ask the AS-IA to take jurisdiction over the appeal?**

No. The AS-IA will not consider a request from any interested party to take jurisdiction over the appeal.

**§ 2.714 May the reviewing official's decision on Tribal representative recognition be appealed?**

Yes. The reviewing official's decision is immediately effective, but not final for the Department. Therefore, any participant may appeal the reviewing official's decision as provided for in this part, or pursue judicial review in Federal court. Notwithstanding any other regulation, the reviewing official's Tribal representative recognition decision shall remain in effect and

binding on the Department unless and until the reviewing official's decision is reversed by superior agency authority or reversed or stayed by order of a Federal court.

**Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance****§ 2.800 What is the purpose of this subpart?**

(a) The purpose of this subpart is to allow an account holder to dispute the accuracy of the activity contained within a Statement of Performance.

(b) The appeals process in this subpart is summarized as follows:

(1) Account holders receive a Statement of Performance at least each quarter. In limited circumstances, account holders may only receive a Statement of Performance annually based upon activity.

(2) An account holder may submit an Objection to the Statement of Performance ("Objection") to the decision-maker.

(3) The decision-maker will render a Decision on the Objection to the Statement of Performance ("Decision").

(4) An account holder may submit an Appeal of the Decision on the Objection to the Statement of Performance ("Appeal") to the Director, BTFA.

(5) The Director, BTFA will render the BTFA's ruling on the account holder's appeal.

(6) An account holder may appeal the BTFA's ruling to the AS-IA.

(7) The AS-IA's decision on the account holder's appeal is a final agency action.

**§ 2.801 What terms do I need to know for this subpart?**

*Account holder* means a Tribe or a person who owns the funds in a Tribal or Individual Indian Money (IIM) account that is maintained by the Secretary.

*Appeal of the Decision on the Objection to the Statement of Performance* ("Appeal") means your appeal of the decision-maker's decision.

*Basis of Objection to the Statement of Performance* ("Basis of Objection") means the documentation you submit supporting your Objection to the Statement of Performance.

*BTFA* means the Bureau of Trust Funds Administration.

*BTFA's Ruling* means the ruling issued by Director, BTFA on your Appeal of the decision-maker's decision.

*Decision on the Objection to the Statement of Performance* ("Decision") means the decision-maker's decision on

your Objection to the Statement of Performance.

*Decision-maker* means the Director, Office of Trust Analysis and Research within the Bureau of Trust Funds Administration who reviews your Objection to the Statement of Performance.

*Objection to the Statement of Performance* ("Objection") means the document you submit to the decision-maker, alleging errors in your Statement of Performance.

*Reviewing official* means the Director, BTFA.

*Statement of Performance (SOP)* means the document that is issued to each account holder that identifies:

- (1) The source, type, and status of the funds;
- (2) The beginning balance;
- (3) The gains and losses;
- (4) Receipts and disbursements; and
- (5) The ending balance.

**§ 2.802 What must I do if I want to challenge the accuracy of activity within a Statement of Performance?**

If you want to challenge the accuracy of activity within a Statement of Performance, you must submit an Objection to the Statement of Performance within 60 calendar days of the statement date.

**§ 2.803 Is every account holder allowed to challenge the accuracy of activity within a Statement of Performance?**

Yes. However, if a Tribe has entered into a settlement with the United States and that settlement contains language concerning the challenge of a statement of performance, the language in the settlement agreement will control.

**§ 2.804 May I challenge the underlying action that generated the proceeds deposited into my account under this subpart?**

No. This subpart is solely for the purpose of challenging the accuracy of the activity within the SOP. If you want to challenge the underlying action that generated the proceeds deposited into your trust account, you must contact the BIA agency responsible for the action.

**§ 2.805 May I challenge anything other than the activity in the account under this subpart?**

No. The purpose of this subpart is to provide a method for account holders to dispute the activity in the account.

**§ 2.806 What must my Objection to the Statement of Performance contain?**

Your Objection to the Statement of Performance must be in writing and contain all of the following:

- (a) Your name, address, and telephone number;



(b) The statement date of the specific Statement of Performance that you are challenging;

(c) A copy of the Statement of Performance being challenged; and

(d) The Basis of Objection.

**§ 2.807 What must my Basis of Objection contain?**

Your Basis of Objection must be in writing and contain:

(a) A statement that details all of the errors or omissions that you believe exist in the Statement of Performance, with as much explanatory detail as possible;

(b) A statement describing the corrective action that you believe BTFA should take; and

(c) All information that you believe relates to the error(s) or omission(s) in the specific Statement of Performance.

**§ 2.808 To whom must I submit my Objection to the Statement of Performance?**

(a) You must submit your Objection to the Statement of Performance to the decision-maker at: U.S. Department of the Interior, Bureau of Trust Funds Administration, Attn: Director, Office of Trust Analysis and Research, 1849 C Street NW, Washington, DC 20240.

(b) Your submission must comply with the provisions of § 2.214.

**§ 2.809 When must I submit my Objection to the Statement of Performance?**

You must submit your Objection to the Statement of Performance within 60 calendar days of the statement date on the Statement of Performance you are challenging.

**§ 2.810 Will the decision-maker acknowledge receipt of my Objection to the Statement of Performance?**

Yes. The decision-maker will provide an acknowledgement of receipt of your Objection to the Statement of Performance within 10 calendar days of receipt in the form of a letter that will be mailed to the address you provided in your Objection.

**§ 2.811 May I request an extension of time to submit my Objection to the Statement of Performance?**

Yes. Within 60 calendar days of the statement date on your Statement of Performance, you may request an extension of time, submitted in compliance with the provisions of § 2.214, from the decision-maker to submit your Objection to the Statement of Performance. The decision-maker may grant one 30-day extension of time in which to submit your Objection to the Statement of Performance.

**§ 2.812 May I appeal the denial of my request for an extension of time?**

No. The denial of an extension of time to submit the Objection to the Statement of Performance is not appealable.

**§ 2.813 If I fail to submit either an Objection to the Statement of Performance or the Basis of Objection within the applicable deadlines, what is the consequence?**

If you fail to submit either the Objection to the Statement of Performance or the Basis of Objection within the applicable deadlines:

(a) The Statement of Performance at issue will be deemed accurate and complete for all purposes;

(b) You will have waived your right to invoke the remainder of the review and appeals process as to that Statement of Performance; and

(c) You will have failed to exhaust the administrative remedies available within the Department.

**§ 2.814 How long will the decision-maker have to issue a Decision on my Objection to the Statement of Performance?**

The decision-maker will have 30 calendar days from the date of receipt of your Basis of Objection to the Statement of Performance to issue a Decision on your Objection to the Statement of Performance. If your Basis of Objection is not received when you submit your Objection to the Statement of Performance and an extension of time was not asked for and granted, the decision-maker will dismiss your Objection to the Statement of Performance.

**§ 2.815 What information will the Decision on my Objection to the Statement of Performance contain?**

The Decision on your Objection to the Statement of Performance will contain an explanation as to whether the decision-maker agrees or disagrees with your Objection to the Statement of Performance. If the decision-maker agrees with your Objection to the Statement of Performance, a correction will be made and reflected on your Statement of Performance. If the decision-maker disagrees with your Objection to the Statement of Performance, the Decision will provide information about your right to appeal the Decision.

**§ 2.816 May I appeal the Decision on my Objection to the Statement of Performance?**

Yes. The Decision issued by the decision-maker is appealable to the reviewing official, who is the Director, BTFA.

**§ 2.817 What must my Appeal of the Decision on the Objection to the Statement of Performance contain?**

Your Appeal must comply with the instructions in § 2.214 and must include the statement date of the specific Statement of Performance that you are appealing.

**§ 2.818 To whom must I submit my Appeal of a Decision on my Objection to the Statement of Performance?**

You must submit your Appeal, as provided in § 2.214, to the reviewing official, at: U.S. Department of the Interior, Bureau of Trust Funds Administration, Attn: Director, BTFA, 1849 C Street NW, Washington, DC 20240.

**§ 2.819 When must my Appeal be filed?**

You must file your Appeal within 30 calendar days of the date that the decision-maker issued the Decision.

**§ 2.820 May I submit any other documents in support of my Appeal?**

No. You may not submit any other documents in support of your Appeal. The reviewing official may only consider the documents that were reviewed by the decision-maker.

**§ 2.821 May I request an extension of time to submit my Appeal?**

No. You must submit the Appeal within 30 calendar days of the issuance of the Decision. The reviewing official will not grant an extension of time to submit your appeal of a Decision.

**§ 2.822 What happens if I do not submit my Appeal within the 30-day deadline?**

If you fail to submit your Appeal within the 30-day deadline:

(a) The decision-maker's decision will be effective;

(b) The Statement of Performance at issue will be deemed accurate and complete;

(c) You will have waived your right to invoke the remainder of the review and appeals process as to that same Statement of Performance; and

(d) You will have failed to exhaust the administrative remedies available within the Department.

**§ 2.823 When will the reviewing official issue the BTFA's ruling?**

The reviewing official will issue the BTFA's ruling within 30 calendar days of receipt of your Appeal of a Decision on your Objection to the Statement of Performance. The ruling will provide information about your right to further appeal.

**§ 2.824 May I appeal the BTFA's ruling?**

Yes. The BTFA's ruling may be appealed to the AS-IA. The procedures,

requirements, and deadlines set out in §§ 2.816, 2.817, and 2.819 through 2.821 apply to appeals to the AS–IA under this subpart. Submit your Appeal to: U.S. Department of the Interior, Office of the Assistant Secretary—Indian Affairs, MS 4660, 1849 C Street NW, Washington, DC 20240, as provided in § 2.214.

#### **§ 2.825 When does the Statement of Performance or a Decision become final?**

(a) Statements of Performance, and decisions rendered by Department officials under this subpart, are final when the deadline for submitting an Objection to the Statement of Performance or an Appeal has expired and the account holder has not submitted an Objection to the Statement of Performance or an Appeal.

(b) A decision rendered by the AS–IA is a final agency action.

#### **Subpart I—Alternative Dispute Resolution**

#### **§ 2.900 Is there a procedure other than a formal appeal for resolving disputes?**

Yes. We strongly encourage parties to work together to reach a consensual resolution of disputes whenever possible. Use of an alternative approach to dispute resolution can save time and money, produce more durable and creative solutions, and foster improved relationships. It may be appropriate and beneficial to consider the use of alternative dispute resolution (ADR) processes and techniques at any stage in a dispute. The parties may request information from the decision-maker on the use of an ADR process.

#### **§ 2.901 How do I request alternative dispute resolution?**

If you are interested in pursuing alternative dispute resolution, you may contact the reviewing official to make a request to use ADR for a particular issue or dispute.

#### **§ 2.902 When do I initiate alternative dispute resolution?**

We will consider a request to use alternative dispute resolution at any time. If you file a Notice of Appeal, you may request the opportunity to use a consensual form of dispute resolution.

#### **§ 2.903 What will Indian Affairs do if I request alternative dispute resolution?**

If all interested parties concur, the reviewing official may stay (discontinue consideration of) the appeal while the parties pursue ADR. Where the parties agree to use ADR, Indian Affairs and other interested parties may seek assistance from the Department of the Interior's Office of Collaborative Action

and Dispute Resolution (CADR). CADR can assist in planning and facilitating an effective collaboration or dispute resolution process. Parties are encouraged to consider best practices for engagement, including but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2023–16733 Filed 8–8–23; 8:45 am]

**BILLING CODE 4337–15–P**

## **DEPARTMENT OF THE INTERIOR**

### **Office of Natural Resources Revenue**

#### **30 CFR Parts 1206, 1208, 1217, and 1220**

[Docket No. ONRR–2022–0001; DS63644000 DRT000000.CH7000 223D1113RT]

**RIN 1012–AA32**

#### **Electronic Provision of Records During an Audit**

**AGENCY:** Office of Natural Resources Revenue (“ONRR”), Interior.

**ACTION:** Final rule.

**SUMMARY:** ONRR is amending its regulations to allow ONRR and other authorized Department of the Interior (“Department”) representatives the option to require that an auditee use electronic means to provide records requested during an audit of an auditee’s royalty reporting and payment.

**DATES:** This final rule is effective 30 days from the date of publication in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this final rulemaking, contact Ginger Hensley, Regulatory Specialist, by phone at 303–231–3171, or by email at [ONRR\\_RegulationsMailbox@onrr.gov](mailto:ONRR_RegulationsMailbox@onrr.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Explanation of Final Rulemaking**

ONRR is responsible for the efficient, timely, and accurate collection and disbursement of revenue originating from the leasing and production of natural resources and energy, including oil, gas, coal, geothermal and other solid minerals, from Federal and Indian lands. *See* 30 U.S.C. 1711; Sec. Order. 3299, as amended; U.S. Department of the Interior Departmental Manual, 112 DM 34 (Dec. 9, 2020). To verify that lessees and other persons accurately report and pay royalties and other amounts due, ONRR audits royalty and

other reporting and payment. 30 U.S.C. 1711(c).

Various sections of ONRR’s regulations, which were adopted in accordance with the Congressional directive found in 30 U.S.C. 1711(a), provide for audits by ONRR and other Department representatives. These sections include:

(1) 30 CFR 1206.250(c), which addresses audits for Federal coal leases.

(2) 30 CFR 1206.350(b), which addresses audits for Federal geothermal leases.

(3) 30 CFR 1206.450(c), which addresses audits for Indian coal leases.

(4) 30 CFR 1208.15, which addresses audits for Federal royalty oil taken in kind.

(5) 30 CFR 1217.50, which addresses audits for Federal and Indian oil and gas leases.

(6) 30 CFR 1217.300, which addresses audits for Federal geothermal leases.

(7) 30 CFR 1220.033(e), which addresses audits for oil and gas net profit share leases.

States or Indian Tribes sometimes perform the audits authorized by these sections under delegations or cooperative agreements with ONRR. *See* 30 U.S.C. 1732 and 1735; 30 CFR parts 1227 and 1228.

Congress and the President mandate that Federal agencies use new technologies to improve Government operations. For example, the Paperwork Reduction Act of 1995, Public Law 104–13, and the Information Technology Management Reform Act of 1996, Public Law 104–106, authorize the use of new technologies to improve the productivity, efficiency, and effectiveness of Government programs. *See* 44 U.S.C. 3501(10), 44 U.S.C. 3504(a)(1)(B)(vi) and (h), 40 U.S.C. parts 11302 and 11303. In addition, the Office of Management and Budget (“OMB”) issued a memorandum on June 28, 2019, entitled “Transition to Electronic Records” (M–19–21), directing Federal agencies to ensure that all Federal records are created, retained, and managed in electronic formats, with appropriate metadata.

To meet these Federal mandates and to take advantage of rapidly improving technologies for the electronic transmission and storage of records, ONRR is amending its regulations to allow ONRR and other Department representatives the option to require that records be provided for an audit by secure electronic means. Because this amendment applies to all oil, gas, geothermal, coal, and other solid mineral royalty audits performed by ONRR or other Department representatives, this final rule: