

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

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

#### **CROSS REFERENCE:**

- For regulations applying to appeals from decisions of the Bureau of Indian Affairs to the Interior Board of Indian Appeals, see 43 CFR part 4.
- For regulations governing the process by which the Bureau conducts Secretarial elections for Tribes wishing to adopt or amend Tribal constitutions, see 25 CFR part 81.
- For regulations governing the process by which a group may become acknowledged as a federally recognized Tribe, see 25 CFR part 83.

## **Subpart A - Purpose, Definitions, and Limitations of this Part**

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

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

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

*Administrative record* means a compilation of documents that includes the decision-making documents, as well as relevant agency documents generated or received in the course of the process of making the decision that is the subject of the appeal.

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

*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 interested party who files an appeal.

*AS-IA* means the Assistant Secretary - Indian Affairs, Department of the Interior. When the office of AS-IA is vacant or when the AS-IA is unable to perform his or her functions, and with respect to a matter from which AS-IA is recused, the Principal Deputy Assistant Secretary-Indian Affairs shall exercise the authority vested in AS-IA by this Part.

*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.

*IEED* means the Office of Indian Energy and Economic Development

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

*Interested party* means a person or other entity whose legally protected interests would be affected by a decision.

*Local Bureau Official (“LBO”)* means the Superintendent, Field Representative, or other BIA official who serves as the primary point of contact between the Bureau and a Tribe.

*Notice of Appeal (“NOA”)* means the written document informing the reviewing official that a decision is being appealed.

*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 § 2.208, and any Tribe that is an interested party.

*Person* means an individual human being.



*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 rule.

*Statement of Reasons (“SOR”)* means a written document submitted by the appellant explaining why the decision or inaction being appealed is in error.

*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 the appellant.

**§ 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 your legally protected interests, including a determination by the decision-maker that he/she 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 a 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 of this part 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) You may challenge actions taken by the reviewing official in the course of processing an appeal, unless otherwise provided in this part. Such a challenge is not a separate appeal. The reviewing official will address the challenges in his/her decision.

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

Not all appeals are subject to this part. Other regulations govern appeals of administrative decisions regarding certain topics. The following table lists some decision topics that are subject to different appeals regulations, in whole or in part, and where to find those regulations.

<b>For appeal rights related to. . .</b>	<b>Refer to. . .</b>
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?**

(a) When an Indian Affairs official makes a decision that is subject to an appeal under this part, the official will include the following notice of appeal rights at the end of the decision document:

This decision may be appealed to the [appropriate reviewing official] at [address, including email address if available]. 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 postmarked (if sent by U.S. mail) or received (if hand-delivered or sent by commercial delivery service or transmitted electronically) 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 required by these regulations. If no appeal is timely filed, this decision will become a final and effective agency action 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 include your name, address, and telephone number. 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 permitted, “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 copies of the notice.

**Where to Send Copies of Your Appeal.** 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] and to interested parties known to you. 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 for Indian Affairs at the following addresses. [Include email addresses as approved] 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 deciding official issues a decision that does not include notice of appeal rights, the decision becomes effective as follows:

(1) If the deciding official discovers within 30 days of issuing the decision that the decision did not include notice of appeal rights, then the deciding official will provide notice of appeal rights to interested parties and the decision will become effective 30 days after the notice of appeal rights is provided.

(2) If the deciding official does not discover within 30 days of issuing the decision that the decision did not include notice of appeal rights and interested parties are not provided notice of appeal rights within 30 days of the decision, and no administrative appeal is timely filed, then the decision becomes effective 30 days after it was issued.

(c) When a decision becomes effective under paragraph (b)(2) of this section, interested parties who received copies of the decision letter may, within 12 months of the date of the decision, file an administrative appeal of the decision. If no appeal is timely filed, the decision becomes final agency action.

**§ 2.105 Who will receive notice of appealable decisions?**

Except as provided in other, more specific, regulations governing decisions, the decision-maker will mail a copy of all appealable decisions to all known interested parties at the addresses the decision-maker has on record 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 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 has standing to appeal a decision?**

You have standing to appeal a decision made by an Indian Affairs official if you can show, by credible statements of fact, that the appealed decision is likely to harm your legally protected interests.

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

No. You may represent yourself. If you choose to be represented by someone else, your representative must meet the standards established in 43 CFR part 1, Practices before the Department of the Interior. If you are being represented by another person, your representative 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, the following table identifies the reviewing officials for appeals under this part:

<b>Decision-Maker</b>	<b>Reviewing Official or IBIA</b>
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 Deciding Official	Director, BTFA
Director of: OIG; IEED; OSG	Appropriate Deputy Assistant Secretary – Indian Affairs
Deputy Assistant Secretary – Indian	AS-IA

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

(a) You have 30 days after you receive notice of the decision you are appealing to file a notice of appeal.

(b) You are presumed to have received actual notice of the decision 10 days after the date that the decision was mailed to you, as long as the deciding official mailed the document to the last address the deciding official has on record for you.

(c) If the reviewing official receives proof that you received the document before the expiration of the 10-day period, you are presumed to have received actual notice on the date proved and 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?**

To file a notice of appeal, you must mail (via the U.S. Postal Service), or deliver via commercial delivery service or hand delivery or via email, if provided for in the deciding official's appeals rights notice, the notice of appeal to the reviewing official identified in the



decision document's notice of appeal rights, as prescribed in § 2.104.

**§ 2.206 What must I include in my notice of appeal?**

Your notice of appeal must include:

- (a) Your name, address, and telephone number (if the deciding official accepts email submissions, you may elect to receive documents via email);
- (b) A copy of the decision being appealed, if possible;
- (c) An explanation of how you satisfy the requirements for standing set out in § 2.200;
- (d) A list of interested parties known to you; and
- (e) A written statement certifying service on each interested party and the decision-maker, showing the name and address of each party served and date of service.

**§ 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 comply with IBIA's regulations, set out at 43 CFR part 4. You must send a copy of your notice of appeal to the AS-IA at the same time you

send the appeal to the IBIA.

**§ 2.208 What must I file in addition to the notice of appeal?**

(a) 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:

(1) Explains why you believe the decision was wrong;

(2) Identifies relevant information or evidence you believe the decision-maker failed to consider and

(3) Describes the relief you seek; and

(4) Provides all documentation you believe supports your arguments.

(b) Except as provided in (c), below, your statement of reasons must be typed in 12-point font, (double spaced) using a standard 8 1/2 by 11 inch word processing format, and shall not exceed 45 pages. The reviewing official may grant an appellant's request for enlargement of the page limit for good cause shown. A reviewing official may return, without action, a statement of reasons that does not comply with the requirements in this subsection, or take other action she/he deems appropriate.

(c) If you are not an attorney and you are representing yourself, you may submit handwritten appeal documents.

**§ 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.

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

An interested party has 30 days after receiving a copy of the statement of reasons to file a response.

**§ 2.211 May the reviewing official grant an extension of time to file a response?**

(a) Yes. The reviewing official may grant a request for a reasonable extension of time to file a response, if the request for extension:

- (1) Is in writing;
- (2) Explains why additional time is needed;
- (3) Specifies how much additional time is requested; and
- (4) Is filed within the time otherwise allowed for filing the response.

(b) For good cause, the reviewing official may extend the time to file a response on her/his own initiative.

**§ 2.212 What must a response include?**

(a) The response must:

(1) Identify the interested party;

(2) State when the interested party received the statement of reasons;

(3) Explain the interested party's legally protected interest affected by the decision being appealed; and

(4) Explain why the interested party believes the arguments made in the appellant's statement of reasons are right or wrong.

(b) The response may also include statements and documents supporting the interested party's position.

(c) Except as provided in subsection (d), below, a response must be typed in 12-point font, (double spaced) using a standard 8 1/2 by 11 inch word processing format, and shall not exceed 30 pages. The reviewing official may grant a request for enlargement of the page limit for good cause shown. A reviewing official may return, without action, a response that does not comply with the requirements in this subsection, or take other action she/he deems appropriate.

(d) If you are not an attorney and you are representing yourself, you may submit handwritten response documents.

**§ 2.213 How does an interested party file a response?**

To file a response, the interested party must mail (via the U.S. Postal Service) or deliver via commercial delivery service or hand delivery, or via email if provided for in the deciding official's appeals rights notice, the response to the reviewing official, the decision-maker, the appellant, and other interested parties within the time period specified in § 2.210.

**§ 2.214 May I file additional briefings?**

(a) Yes. You may file a reply to an interested party's response with the reviewing official within 21 days of receiving a copy of the response brief. You must send a copy of your reply to the deciding official and all interested parties.

(b) You may file a supplemental brief within 10 days after receiving the administrative record prepared by the deciding official.

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

(d) You may not file any documents other than those specified in this part and those permitted by the reviewing official under paragraph (c) of this section.

(e) Except as provided in subsection (f), below, any briefing filed pursuant to this section must be typed in 12-point font, (double spaced) using a standard 8 1/2 by 11inch word processing format and shall not exceed 15 pages. The reviewing official may grant a request for enlargement of the page limit for good cause shown. A reviewing official may return, without

action, a brief that does not comply with the requirements in this subsection, or take other action she/he deems appropriate.

(f) If you are not an attorney and you are representing yourself, you may submit handwritten response documents.

**§ 2.215 How do I know if my filing is timely filed?**

(a) To determine whether a document has been filed on time, the reviewing official will calculate the amount of time from when the interested party received notice of the triggering event (i.e., the decision being appealed or the filing of an appeal) to the date of the postmark (on the interested party's filing if submitted via the U.S. Postal Service) or the date that the filing was placed with a commercial delivery service or hand-delivered to the reviewing official or received electronically.

(b) The reviewing official need not have actually received the document prior to the deadline as long as the document was mailed, or delivered, to the office of the reviewing official by the deadline.

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

**§ 2.216 What if a deadline for filing a document falls on a weekend or Federal holiday?**

If a deadline falls on a weekend or on a Federal holiday, the document must be postmarked (if submitted via the U.S Postal Service) or placed with a commercial delivery service or hand-delivered by the next Federal workday.

**§ 2.217 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 the administrative record for review by interested parties. When the deciding official transmits the administrative record to the reviewing official, the deciding official 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 deciding official. Interested parties may request copies of all or part of the administrative record. Where reproduction and transmission of the administrative record imposes costs on the BIA exceeding \$50, the BIA may charge the requestor for those costs. BIA shall not charge for such costs without the requestor's approval. The deciding official 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

deciding official shall redact the documents provided to the requester as required by law (e.g., the Privacy Act). The deciding official 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.

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

### **§ 2.218 Do I have to keep my address current?**

Every participant who files a document in connection with an appeal must include his or her address. If that party's address changes, the party must promptly report the new address to the official with whom the previous address was filed. The most current address on file with the official is considered the proper address for the purposes of this part. Any participant, including successors in interest, who fails to keep his or her current address on file with the relevant office may not object to lack of notice or service attributable to such failure.

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



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

(a) When an agency decision is effective pursuant to §§ 2.104, 2.301(b), or 2.501, a participant can elect to pursue administrative remedies provided in this part, or challenge the agency decision in Federal court.

(b) 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/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.

(3) A reviewing official's decision to place an appealed decision into immediate effect must 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. Any participant in this matter who still wishes to challenge the decision that has been made effective may pursue administrative remedies or file a lawsuit in Federal district court. Within 30 days of this decision, you must notify this office of your election to do one of the following –

(1) Have this office continue with its review of the appealed decision, or;

- (2) Pursue Federal litigation, or;
- (3) Discontinue your challenge to the decision.

If, within 30 days of this decision, you fail to either file a federal lawsuit or notify this office of your election pursuant to this section, you will have failed to exhaust mandatory administrative remedies. If you elect to discontinue your challenge to the decision, or if you do not timely file notice of your election, the decision will become a final agency action.

**§ 2.301 When is a decision final?**

(a) Agency decisions that are not subject to administrative appeal are final when issued unless the decision itself provides otherwise.

(b) Agency decisions that are subject to further administrative appeal become final agency actions when the appeal period expires without an appeal being filed.

**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 will 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 potential 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 to require an appeal bond?**

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

### **Subpart E - Deciding Appeals**

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

Yes. The reviewing official may, either in his or her own discretion or upon request by a participant, 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.

#### **§ 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 30-day filing deadline.

#### **§ 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;
  - (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 factual material that was not included in the administrative record, the reviewing official will:

(1) Provide a copy of that information to all participants; and

(2) Establish a schedule for participants to review and comment on the material.

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

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

(1) The filing of the NOA;

(2) The filing of any responses, replies, or supplemental briefs under § 2.209 and § 2.213;

or

(3) The filing of any comments on additional material under § 2.504(b).

(b) A reviewing official may, for good cause and with notice to 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 participants of a decision?**

The reviewing official will send the decision to the decision-maker, to the participants, and all known interested parties.

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

(a) To appeal a reviewing official’s decision, 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, the deadline for filing an appeal, and refer participants to the regulations governing the appeal.

(c) Except where a specific section of this part sets out a different appellate hierarchy, the following chart indicates the officer to whom subsequent appeals should be addressed.

<b>Reviewing Official (or IBIA) whose decision is being appealed</b>	<b>Official to whom the appeal is addressed</b>
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 45 days from the date on which the IBIA received a copy of 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. If the AS-IA does not provide written notification to the IBIA within the 45-day period, the IBIA will docket your appeal pursuant to its regulations (43 CFR 4.336).

**§ 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 AS-IA in accordance with the table 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, AS-IA shall transmit to the participants a notice of assumption of jurisdiction.

The notice will include information on when and how to file briefs, access to the administrative record, and may include instructions for filing briefs electronically;

(b) Briefs shall be submitted as follows, unless AS-IA specifies otherwise:

(1) All participants' initial briefs shall be due within 21 days of the date of AS-IA's notice of assumption of jurisdiction. Briefs must be typed in 12-point font, (double spaced) using a standard 8 1/2 by 11 inch word processing format, and shall not exceed 30 pages. Initial briefs must include certification of service on all other participants identified in AS-IA's notice of assumption of jurisdiction;

(2) All participants' answering briefs shall be due within 35 days of the date of AS-IA's notice of assumption of jurisdiction. Answering briefs must be typed in 12-point font, (double spaced) using a standard 8 1/2 by 11 inch word processing format, and shall not exceed 15 pages;

(3) For good cause shown, AS-IA may extend deadlines, may allow handwritten briefs, and may permit submission of reply briefs.

(c) AS-IA shall render a decision on the appeal within 60 days of the filing deadline for final briefing. AS-IA may, for good cause and with notice to the participants, extend the deadline for issuing a decision by 60 days.

(d) AS-IA may affirm the decision of the reviewing official based on the record before the reviewing official.

(e) The AS-IA may delegate to a Deputy Assistant Secretary the authority and responsibility for rendering a final agency decision on an appeal.

**§ 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 by 43 CFR 4.5(b).

**Subpart F – Appealing Inaction of an Agency Official**

**§ 2.600 May I compel an agency official to render a decision?**

(a) Yes. If a decision-maker fails to take action on your written request for a decision that you believe the decision-maker is required to make, 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 that he/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 render the decision 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 makes a decision on the written request within 15 days of receipt of such request by the official, 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, some other procedural order that will further the decision-making process, or a written notice of the date by which the decision

will be issued. If the decision-maker identifies a later date by which the decision will be issued, the date may not be more 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 meet the response deadlines established in § 2.601, you may appeal the decision-maker's 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.indianaffairs.gov/region-by-state?field\\_states\\_served\\_tid=All%20](https://www.indianaffairs.gov/region-by-state?field_states_served_tid=All%20) );

(3) Director, Bureau of Indian Affairs (1849 C Street, NW, MS 4660, Washington, DC 20240);

(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;

(5) AS-IA.

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

(1) Deputy Director BIA, Office of Justice Services;

(2) Director, BIA;

(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 above. If electronic filing is permitted, “Notice of Appeal” 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 will, within 15 days of receiving the appeal, formally direct the decision-maker to issue a decision on the matter within 15 days of the decision-maker’s receipt of the official direction. The official will send you a copy of his/her instructions to the decision-maker.

**§ 2.605 May I appeal continued inaction?**

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

**§ 2.606 May I appeal inaction by a reviewing official?**

(a) Yes. If you have appealed a decision-maker’s decision, you may appeal inaction by the reviewing official as provided for in this subpart if --

(1) Your appeal is before an Indian Affairs official whose decisions are subject to appeal under this part, and

(2) The reviewing official has issued a briefing schedule that includes a decision date; and

(3) The reviewing official has not issued a decision by the date indicated.

(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 F without obtaining a decision by a Department official, 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 allow interested parties an opportunity to dispute a Bureau decision recognizing a Tribal representative. Provisions in subparts A-F also apply, except that, if a provision in this subpart conflicts with a provision in subpart A-F, the provision in this subpart will govern.

**§ 2.701 May a local Bureau official's recognition of a Tribal representative be appealed?**

Yes. A decision by the LBO 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].

**Deadline for Appeal.** Your notice of appeal must be postmarked (if sent by U.S. mail) or placed with a commercial delivery service, or delivered to the reviewing official by hand [or electronically, if available] within **10 (ten)** days of the date you receive notice of this decision. 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 a final agency action 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 include your name, address, and telephone number. 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.” Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must explain how you satisfy the standing requirements in 25 CFR 2.200.

**Where to Send Copies of Your Appeal.** 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.

**§ 2.703 How do I file a notice of appeal of a Tribal representative recognition decision?**

To file a notice of appeal, you must mail (via the U.S. Postal Service), or deliver via commercial delivery service or hand delivery, the notice of appeal to the reviewing official identified in the decision document’s notice of appeal rights, as prescribed in § 2.702. If provided for in the deciding official’s appeals rights notice, you may submit your notice of appeal electronically. If electronic filing is permitted, “Notice of Appeal” must appear in the



subject line of the email submission.

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

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

**§ 2.705 What must I include in my notice of appeal of a Tribal representative recognition decision?**

Your notice of appeal must include:

- (a) Your name, address, and telephone number;
- (b) A copy of the decision being appealed, if possible;
- (c) An explanation of how you satisfy the requirements for standing set out in § 2.200;
- (d) A list of interested parties known to you; and
- (e) A written statement certifying service on each interested party and the decision-maker, showing the name and address of each party served and date of service.

**§ 2.706 Do I have to send the notice of appeal to anyone other than the reviewing official?**

Yes. In addition to submitting your notice of appeal to the reviewing official, you must

provide copies of your notice of appeal to the decision-maker and all interested parties known to you.

**§ 2.707 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 Sec. 2.208.

**§ 2.708 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.

**§ 2.709 May interested parties file a response to the statement of reasons?**

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

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

An interested party has 10 days after receiving a copy of the statement of reasons to file a response.

**§ 2.711 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.

**§ 2.712 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.

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

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

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

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

**§ 2.715 May I ask 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.

**§ 2.716 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 or stayed by superior agency authority or by order of 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 account balance contained within a Statement of Performance.

(b) The appeals process in this subpart is summarized as follows, with italicized terms defined in § 2.801:

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

(2) An account holder may submit an *Objection to the Statement of Performance* (“Objection”) to the *deciding official*.

(3) The deciding official 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 deciding official’s decision.

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

*BTFA* means the Bureau of Trust Funds Administration.

*Deciding official* 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.

*Decision on the Objection to the Statement of Performance (“Decision”)* means the Deciding Official’s decision on your Objection to the Statement of Performance.

*Objection to the Statement of Performance (“Objection”)* means the document you submit to the Deciding Official, alleging errors in your Statement of Performance.

*BTFA’s Ruling* means the ruling issued by Director, BTFA on your Appeal of the Deciding Official’s Decision.

*Reviewing official* means the Director, BTFA.

*Statement of Performance* 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 a Statement of Performance?**

If you want to challenge the accuracy of 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 a Statement of Performance?**

No. If you are a Tribe and you entered into a settlement with the United States that contains language concerning your ability to challenge a Statement of Performance, the language of the settlement controls.

**§ 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 funds that were deposited into your trust account. 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 the investment rate of return or type of investment under this subpart?**

No. This subpart is solely for the purpose of challenging the funds that were deposited into your trust 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?**

You must submit your Objection to the Statement of Performance to the deciding official either electronically at (email address) or via US mail, commercial delivery service, or hand-delivered 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

**§ 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 deciding official acknowledge receipt of my Objection to the Statement of Performance?**

Yes, the deciding official 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, either electronically or via U.S. mail, commercial delivery service, or hand-delivered from the Deciding Official to submit your Objection to the Statement of Performance. The deciding official 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 deciding official have to issue a Decision on my Objection to the Statement of Performance?**

The deciding official 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 deciding official 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 deciding official agrees or disagrees with your Objection to the Statement of Performance. If the deciding official agrees with your Objection to the Statement of Performance, a correction will be made and reflected in your current Statement of Performance will be issued. If the deciding official 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 deciding official 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 be in writing and contain:

- (a) Your name, address, and telephone number. If the deciding official accepts emails submissions, you may elect to receive documents via email;
  - (b) The statement date of the specific Statement of Performance that you are appealing;
  - (c) The date of the Decision that you are appealing;
  - (d) A statement that describes the reasons why the Decision was incorrect;
  - (e) A description of the corrective action that you believe the reviewing official should take;
- and
- (f) A copy of the decision being appealed.

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

Your Appeal must be submitted to reviewing official either electronically at (email address) or via US mail, commercial delivery service, or hand-delivered 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 deciding official 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 deciding official.

**§ 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 deciding official's Decision will be effective;
- (b) The Statement of Performance at issue will be deemed accurate and complete for all purposes;
- (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 AS-IA. The procedures, requirements, and deadlines set out in §§ 2.816, 2.817 and 2.819 through 2.821 apply to appeals to AS-IA under this subpart. Send your appeal either electronically at (email address) or via US mail, commercial delivery service, or hand-delivered to:

U.S. Department of the Interior  
Office of the Assistant Secretary-Indian Affairs  
MS 4141  
1849 C Street, NW  
Washington, DC 20240

**§ 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 deciding official 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.

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