

Public Health Service, HHS

§ 137.441

the Secretary under 42 CFR 137.43 shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. S.W., Washington, DC, 20201. You shall serve copies of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

§ 137.433 Is the recommended decision always final?

No, any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 30 days of receiving the recommended decision. Objections must be served on all other parties. The recommended decision shall become final for the Secretary 30 days after the Indian Tribe receives the ALJs recommended decision, unless a written statement of objections is filed with the Secretary during the 30-day period. If no party files a written statement of objections within 30 days, the recommended decision shall become final for the Secretary.

§ 137.434 If an Indian Tribe objects to the recommended decision, what will the Secretary do?

(a) The Secretary has 45 days from the date it receives the final authorized submission in the appeal to modify, adopt, or reverse the recommended decision. The Secretary also may remand the case to the IBIA for further proceedings. If the Secretary does not modify or reverse the recommended decision or remand the case to the IBIA during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the Secretary must:

- (1) Be in writing;
- (2) Specify the findings of fact or conclusions of law that are modified or reversed;
- (3) Give reasons for the decision, based on the record; and
- (4) State that the decision is final for the Department.

§ 137.435 Will an appeal adversely affect the Indian Tribe's rights in other compact, funding negotiations, or construction project agreement?

No, a pending appeal will not adversely affect or prevent the negotiation or award of another compact, funding agreement, or construction project agreement.

§ 137.436 Will the decisions on appeal be available for the public to review?

Yes, all final decisions must be published for the Department under this subpart. Decisions can be found on the Department's website.

APPEALS OF AN IMMEDIATE REASSUMPTION OF A SELF-GOVERNANCE PROGRAM

§ 137.440 What happens in the case of an immediate reassumption under section 507(a)(2)(C) of the Act [25 U.S.C. 458aaa-6(a)(2)(C)]?

(a) The Secretary may, upon written notification to the Self-Governance Tribe, immediately reassume operation of a program, service, function, or activity (or portion thereof) if:

(1) The Secretary makes a finding of imminent substantial and irreparable endangerment of the public health caused by an act or omission of the Self-Governance Tribe; and

(2) The endangerment arises out of a failure to carry out the compact or funding agreement.

(b) When the Secretary advises a Self-Governance Tribe that the Secretary intends to take an action referred to in paragraph (a) of this section, the Secretary must also notify the Deputy Director of the Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

§ 137.441 Will there be a hearing?

Yes, unless the Self-Governance Tribe waives its right to a hearing in writing. The Deputy Director of the Office of Hearings and Appeals must appoint an Administrative Law Judge to hold a hearing,

(a) The hearing must be held within 10 days of the date of the notice referred to in §137.440 unless the Self-