

**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-

**§ 137.442**

**42 CFR Ch. I (10–1–06 Edition)**

Governance Tribe agrees to a later date.

(b) If possible, the hearing will be held at the office of the Self-Governance Tribe. If the hearing is held more than 50 miles from the office of the Self-Governance Tribe, the Secretary must arrange to pay transportation costs and per diem for incidental expenses. This will allow for adequate representation of the Self-Governance Tribe.

**§ 137.442 What happens after the hearing?**

(a) Within 30 days after the end of the hearing or any post-hearing briefing schedule established by the ALJ, the ALJ must send all parties a recommended decision by certified mail, return receipt requested. The recommended decision shall contain the ALJs findings of fact and conclusions of law on all the issues. The recommended decision must also state that the Self-Governance Tribe has the right to object to the recommended decision.

(b) The recommended decision must contain the following statement:

Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Secretary under §137.443. An appeal to the Secretary under 25 CFR 900.165(b) shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. SW., 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 15 days, the recommended decision will become final.

**§ 137.443 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 15 days of receiving the recommended decision. The objecting party must serve a copy of its objections on the other party. The recommended decision will become final 15 days after the Self-Governance

Tribe receives the ALJs recommended decision, unless a written statement of objections is filed with the Secretary during the 15-day period. If no party files a written statement of objections within 15 days, the recommended decision will become final.

**§ 137.444 If a Self-Governance Tribe objects to the recommended decision, what action will the Secretary take?**

(a) The Secretary has 15 days from the date the Secretary receives timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary does not modify or reverse the recommended decision 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 Secretary.

**§ 137.445 Will an immediate reassumption appeal adversely affect the Self-Governance Tribe's rights in other self-governance negotiations?**

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

**EQUAL ACCESS TO JUSTICE ACT FEES**

**§ 137.450 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?**

Yes, EAJA claims against the Department will be heard pursuant to 25 CFR 900.177.

**PARTS 138–199 [RESERVED]**