

## SUBCHAPTER A—PROCEDURES AND PRACTICE

### PART 1—APPLICABILITY OF RULES OF THE BUREAU OF INDIAN AFFAIRS

Sec.

1.1 [Reserved]

1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.

1.3 Scope.

1.4 State and local regulation of the use of Indian property.

1.10 Availability of forms.

AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2.

#### § 1.1 [Reserved]

#### § 1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.

The regulations in chapter I of title 25 of the Code of Federal Regulations are of general application. Notwithstanding any limitations contained in the regulations of this chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in chapter I of title 25 CFR in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.

[25 FR 3124, Apr. 12, 1960]

#### § 1.3 Scope.

Chapters I and II of this title contain the bulk of the regulations of the Department of the Interior of general application relating to Indian affairs. Subtitle B, chapter I, title 43 of the Code of Federal Regulations contains rules relating to the relationship of Indians to public lands and townsites. Subtitle A of title 43 CFR has application to certain aspects of Indian affairs and, among other things, contains procedural rules for appellate and other administrative review and for practice before the Department of the Interior, of which the Bureau of Indian Affairs is a part. Indian health matters are covered in 42 CFR part 36. Title 30 CFR contains regulations on oil and gas and other mining operations, which, under

certain circumstances, may be applicable to Indian resources.

[25 FR 3124, Apr. 12, 1960, as amended at 40 FR 20625, May 12, 1975; 48 FR 13414, Mar. 31, 1983]

#### § 1.4 State and local regulation of the use of Indian property.

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

[30 FR 7520, June 9, 1965]

#### § 1.10 Availability of forms.

Forms upon which applications and related documents may be filed and upon which rights and privileges may be granted may be inspected and procured at the Bureau of Indian Affairs, Washington, DC, and at the office of

any Area Director or Agency Superintendent.

[25 FR 3124, Apr. 12, 1960]

## PART 2—APPEALS FROM ADMINISTRATIVE ACTIONS

Sec.

- 2.1 Information collection.
- 2.2 Definitions.
- 2.3 Applicability.
- 2.4 Officials who may decide appeals.
- 2.5 Appeal bond.
- 2.6 Finality of decisions.
- 2.7 Notice of administrative decision or action.
- 2.8 Appeal from inaction of official.
- 2.9 Notice of an appeal.
- 2.10 Statement of reasons.
- 2.11 Answer of interested party.
- 2.12 Service of appeal documents.
- 2.13 Filing documents.
- 2.14 Record address.
- 2.15 Computation of time.
- 2.16 Extensions of time.
- 2.17 Summary dismissal.
- 2.18 Consolidation of appeals.
- 2.19 Action by Area Directors and Education Programs officials on appeal.
- 2.20 Action by the Assistant Secretary—Indian Affairs on appeal.
- 2.21 Scope of review.

AUTHORITY: R.S. 463, 465; 5 U.S.C. 301, 25 U.S.C. 2, 9.

SOURCE: 54 FR 6480, Feb. 10, 1989, unless otherwise noted.

### § 2.1 Information collection.

In accordance with Office of Management and Budget regulations in 5 CFR 1320.3(c), approval of information collections contained in this regulation is not required.

### § 2.2 Definitions.

*Appeal* means a written request for review of an action or the inaction of an official of the Bureau of Indian Affairs that is claimed to adversely affect the interested party making the request.

*Appellant* means any interested party who files an appeal under this part.

*Interested party* means any person whose interests could be adversely affected by a decision in an appeal.

*Legal holiday* means a Federal holiday as designated by the President or the Congress of the United States.

*Notice of appeal* means the written document sent to the official des-

ignated in this part, indicating that a decision is being appealed (see § 2.9).

*Person* includes any Indian or non-Indian individual, corporation, tribe or other organization.

*Statement of reasons* means a written document submitted by the appellant explaining why the decision being appealed is in error (see § 2.10).

[54 FR 6480, Feb. 10, 1989; 54 FR 7666, Feb. 22, 1989]

### § 2.3 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all appeals from decisions made by officials of the Bureau of Indian Affairs by persons who may be adversely affected by such decisions.

(b) This part does not apply if any other regulation or Federal statute provides a different administrative appeal procedure applicable to a specific type of decision.

### § 2.4 Officials who may decide appeals.

The following officials may decide appeals:

(a) An Area Director, if the subject of appeal is a decision by a person under the authority of that Area Director.

(b) An Area Education Programs Administrator, Agency Superintendent for Education, President of a Post-Secondary School, or the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs), if the appeal is from a decision by an Office of Indian Education Programs (OIEP) official under his/her jurisdiction.

(c) The Assistant Secretary—Indian Affairs pursuant to the provisions of § 2.20 of this part.

(d) A Deputy to the Assistant Secretary—Indian Affairs pursuant to the provisions of § 2.20(c) of this part.

(e) The Interior Board of Indian Appeals, pursuant to the provisions of 43 CFR part 4, subpart D, if the appeal is from a decision made by an Area Director or a Deputy to the Assistant Secretary—Indian Affairs other than the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).