

Department of the Interior Departmental Manual

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Part 212: Policy, Management and Budget

Chapter 13: Office of Hearings and Appeals

Originating Office: Office of Hearings and Appeals

212 DM 13

13.1 General Authority. The Director, Office of Hearings and Appeals (OHA), is authorized to exercise all of the program management and administrative authorities contained in 212 DM 1 with respect to the hearings and appeals functions of the Department, in accordance with existing policies, regulations, and procedures of the Department. The Director is also authorized to decide appeals to the Secretary of the Interior (Secretary) that do not lie within the appellate review jurisdiction of an established Appeals Board and that are not specifically excepted in 212 DM 13.8.

13.2 Ad Hoc Boards of Appeals. The Director may establish Ad Hoc Boards of Appeals to decide cases that do not lie within the appellate review jurisdiction of an established Appeals Board, in lieu of deciding such cases personally, and he or she may appoint personnel within OHA to serve on such Boards.

13.3 Hearings Divisions.

A. Administrative Law Judges are authorized to conduct hearings and render decisions in all cases required by law to be conducted pursuant to 5 U.S.C. § 554 and in other cases arising within the Department, including proceedings under the White Earth Reservation Land Settlement Act of 1985, Pub. L. 99-264, 100 Stat. 61.

B. Indian Probate Judges are authorized to conduct hearings and render decisions in Indian probate matters.

C. Attorney Decision Makers are authorized to conduct hearings and render decisions in summary probate proceedings and to conduct hearings and issue findings of fact, conclusions of law, and recommended decisions in formal probate proceedings when designated a master for such purpose by an Administrative Law Judge or Indian Probate Judge.

D. Administrative Law Judges and Indian Probate Judges are also authorized to make determinations of heirs and devisees under paragraph 2 of the Stipulated Order in *Aguilar v. United States*, No. A76-271 (D. Alaska Feb. 9, 1983).

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Replaces 6/1/12 #3946

13.4 Interior Board of Indian Appeals. The Chief Administrative Judge and Administrative Judge(s) of the Interior Board of Indian Appeals are authorized to exercise, pursuant to regulations published in the Federal Register, the following authority of the Secretary to decide:

A. Appeals from:

- (1) Administrative actions and decisions of officials of the Bureau of Indian Affairs as provided under 25 CFR Part 2 and 43 CFR Part 4;
- (2) Orders and decisions of Administrative Law Judges and Indian Probate Judges in Indian probate matters;
- (3) Decisions of the Superintendent of the Osage Indian Agency on the validity of Osage Indian wills, pursuant to 25 CFR § 17.14;
- (4) Decisions of an Administrative Law Judge under the White Earth Reservation Land Settlement Act;
- (5) Decisions of Bureaus/Offices and of Administrative Law Judges in Indian Self-Determination and Education Assistance Act cases;
- (6) Historical accountings issued by the Office of Historical Trust Accounting;
- (7) Determinations of Administrative Law Judges and Indian Probate Judges in *Aguilar* proceedings under 212 DM 13.3E; and
- (8) Decisions of an Administrative Law Judge in civil penalty proceedings under the Native American Graves Protection and Repatriation regulations, pursuant to 43 CFR § 10.12(k).

B. Requests for reconsideration of acknowledgment determinations of the Assistant Secretary – Indian Affairs, to the extent provided by 25 CFR Part 83; and

C. Other matters pertaining to Indians referred to the Board by the Secretary, the Assistant Secretary – Indian Affairs, or the Director, or as otherwise provided by regulation.

13.5 Interior Board of Land Appeals. The Chief Administrative Judge, Deputy Chief Administrative Judge, and Administrative Judges of the Interior Board of Land Appeals are authorized to exercise, pursuant to regulations published in the Federal Register, the authority of the Secretary in deciding appeals from decisions rendered by Departmental officials relating to the following:

A. The use and disposition of public lands and their resources and the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf;

B. Land selections under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.*; and

C. Surface coal mining and reclamation operations under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 *et seq.*

13.6 **Finality of Board Decisions.**

A. Decisions of any Appeals Board are final for the Department, except as provided in paragraph 13.6B-C.

B. The Secretary reserves the right to exercise any power conferred upon him or her by law. The authority reserved to the Secretary includes but is not limited to:

(1) The authority to take jurisdiction at any stage of any case before any employee or employees of the Department, including any Administrative Law Judge or Board of OHA, and render the final decision in the matter, after holding such hearing as may be required by law; and

(2) The authority to review any decision of OHA or a Board or to direct OHA or a Board to reconsider a decision. (See 43 CFR 4.5.)

C. The Director may assume jurisdiction of or review any case before any Board of OHA and may direct reconsideration of any case by any Board of OHA.

13.7 Federal Register Documents. The Director is authorized to issue general notices pertaining to the functions assigned to OHA. Issuance of notices of proposed rulemaking and final rules for codification in the Code of Federal Regulations is reserved for Secretarial signature.

13.8 Limitations. Except as specifically authorized by the Secretary or his or her designee or by regulation, the authority conferred by the general Departmental regulations and the other paragraphs of this Chapter does not include authority:

A. To consider and decide appeals pertaining to:

(1) Administrative actions on Indian matters, appealed under 25 CFR Part 2, which are based solely upon discretionary authority of the Secretary;

(2) Enrollment of Indians;

(3) Estates involving the restricted property of Indians of the Five Civilized Tribes and Osage Indians;

(4) Tort or irrigation claims;

(5) Requests with respect to availability of official records and testimony of employees under 43 CFR Part 2; or

(6) Decisions of the High Court of American Samoa.

B. To review a decision in a particular matter involving specific parties issued or approved by the Secretary, the Deputy Secretary, or an Assistant Secretary.

C. To overrule, modify, or disregard formal legal interpretations (M-Opinions) issued by the Solicitor (or Deputy Solicitor if authorized under 209 DM 3.3), which are binding on all Departmental offices and officials, as provided in 209 DM 3.2A (11). If the Director believes that an intervening statute or judicial opinion may have affected an M-Opinion, the Director may so advise the Solicitor and request his or her guidance.

D. To review the merits of a biological opinion issued by the U.S Fish and Wildlife Service under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*