

Department of the Interior Departmental Manual

Effective Date: 6/5/92

Series: Legal

Part 452: Litigation

Chapter 2: Formal Intervention in Administrative Proceedings before other Federal Agencies

Originating Office: Office of the Solicitor

452 DM 2

2.1 **Policy.** Petitions to intervene in the formal adjudicatory administrative proceedings of other Federal agencies shall be prepared and filed in accordance with this chapter.

2.2 **Responsibilities.**

A. Secretary. The Secretary is responsible for reviewing and deciding intervention actions which involve inter-bureau conflicts unresolved by the assistant secretaries, or as he or she may otherwise determine to be appropriate.

B. Assistant Secretaries. The assistant secretaries are responsible for reviewing and deciding intervention actions which involve intra or inter-bureau conflicts unresolved by the bureau directors. The Assistant Secretary - Policy, Management and Budget is designated to serve as the Department's Dispute Resolution Specialist and will apply alternative dispute resolution techniques as necessary when a conflict involves more than one assistant secretary. In addition, the Assistant Secretary - Policy, Management and Budget acting through the Office of Environmental Affairs, is responsible for advising bureaus on the policy aspects of intervention related to environmental issues and, when intervention is contemplated, the Office of Environmental Affairs must be consulted in this regard.

C. Bureau Directors. The bureau directors are responsible for reviewing and deciding intervention actions which involve intra or inter-bureau conflicts and for proposing solutions to conflicts unresolved at the regional level. Bureau directors may also initiate a review and/or an intervention action when issues arise at headquarters.

D. Regional Directors. Bureau regional directors shall be responsible for reviewing and deciding whether or not to propose intervention in the formal adjudicatory administrative proceedings of other Federal agencies. Further, regional directors are responsible for coordinating their actions with their headquarters office, other bureaus as appropriate, and the Office of the Solicitor.

E. Office of the Solicitor. The Office of the Solicitor shall be responsible for reviewing and deciding whether or not to intervene in the formal adjudicatory proceedings of

other Federal agencies, on the legal aspects of the intervention process and for filing the petition in cases where intervention has been authorized. The Office of the Solicitor may initiate discussions with bureaus to consider an intervention action. Whenever intervention in the formal administrative proceedings of other Federal agencies is contemplated, the Office of the Solicitor must be consulted and the appropriate concurrence obtained.

2.3 Procedures.

A. General

(1) Administrative memoranda may be issued as necessary to apply the provisions of this chapter to particular administrative proceedings of other Federal agencies. Such administrative memoranda shall refer to this chapter, shall be prepared by the bureau or other Departmental office having primary jurisdiction or expertise in the other agency process, and shall be circulated for comment and clearance. Clearance officers shall include, at a minimum, the Office of the Solicitor and the Assistant Secretary - Policy, Management and Budget.

(2) The regional director or equivalent official of a bureau is authorized to request the Office of the Solicitor to intervene in the formal adjudicatory administrative proceedings of other Federal agencies, and the Office of the Solicitor is authorized to file intervention petitions and to conduct such proceedings thereafter.

(3) When more than one bureau has concerns, the lead role shall be taken by the bureau with the largest jurisdictional or program interest. Regional directors are expected to determine the lead bureau in a rational and efficient manner. Any regional officer or headquarters officer as appropriate may be consulted in this regard.

(4) Proceedings may involve natural resource and environmental interest of the Department. In such cases, there may be a concurrent environmental review being conducted under 516 DM 7. Coordination under that chapter and this chapter may, therefore, be necessary.

(5) Concurrence of both the Office of the Solicitor and the Office of Environmental Affairs (or their regional offices) are required on all environmental interventions. Concurrence of the Office of Program Analysis shall be obtained in lieu of the Office of Environmental Affairs on non-environmental interventions.

B. Process.

(1) If a regional or bureau director proposes to intervene in an administrative proceeding, he or she will conduct an intra-Departmental review as appropriate by circulating a proposal to intervene with background materials to other regional directors, the regional or appropriate associate solicitor, the appropriate environmental officer, and others as necessary.

(2) Specific timeframes will be imposed by the regional director on other reviewers to insure that petitions to intervene are filed with the other Federal agency in a timely manner.

(3) The proposal to intervene will be examined for intra-Departmental, Federal-State, and other potential policy or legal issues. The regional director or bureau director shall consult with the regional or associate solicitor and the regional environmental officer and/or their headquarters counterparts as necessary to determine the extent of these issues and to outline conflicts with other bureaus.

(4) If no comments are received by the originating bureau, that bureau will request the Office of the Solicitor to proceed with the intervention process before the close of the other agency's comment period.

(5) If the originating bureau and other bureaus determine that intervention is appropriate and there are no inter-bureau conflicts, the originating bureau will request, on behalf of all bureaus, that the Office of the Solicitor prepare and file the petition to intervene prior to the close of the other agency's comment period.

(6) If the originating bureau and other bureaus determine that intervention is appropriate and there are inter-bureau conflicts that cannot be resolved, the procedures of 452 DM 2.3C will be followed. For purposes of this provision (452 DM 2.3B(6)), disagreements involving the Office of the Solicitor, the Office of Environmental Affairs, or the Office of Program Analysis will trigger the procedures under 452 DM 2.3C.

C. Conflict Resolution.

(1) If bureau conflicts cannot be resolved at the level at which they occur (452 DM 2.3B(6)), the originating bureau shall forward a request for resolution to the bureau director who will seek resolution with other bureau directors.

(2) If resolution cannot be achieved by the bureau directors, the originating bureau will seek resolution with the assistant secretaries and the Assistant Secretary - Policy, Management and Budget who shall employ alternative dispute resolution techniques when more than one assistant secretary is involved.

(3) If necessary, any assistant secretary seeking to resolve an intervention issue and not fully satisfied with the mediation process, may request that the Secretary review the issue.

(4) The Secretary may address bureau conflicts at any stage in this process and resolve the matter as he/she may determine to be appropriate.

6/5/92 #2945

Replaces 11/9/65 #777