

§ 137.424

(b) Every report of an informal conference must contain the following language:

Within 30 days of the receipt of the recommended decision from the informal conference, you may file an appeal of the initial decision of the DHHS agency with the Interior Board of Indian Appeals (IBIA) under 42 CFR 137.425. You may request a hearing on the record. An appeal to the IBIA under 42 CFR 137.425 shall be filed with the IBIA by certified mail or hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. Alternatively you may file an action in Federal court pursuant to section 110 of the Act. [25 U.S.C. 450m-1].

§ 137.424 Is the recommended decision from the informal conference final for the Secretary?

No. If the Indian Tribe is dissatisfied with the recommended decision from the informal conference, it may still appeal the initial decision within 30 days of receiving the recommended decision and the report of the informal conference. If the Indian Tribe does not file a notice of appeal within 30 days, or before the expiration of the extension it has received under § 137.426, the recommended decision of the informal conference becomes final for the Secretary and may be appealed to Federal court pursuant to section 110 of the Act [25 U.S.C. 450m-1].

§ 137.425 How does an Indian Tribe appeal the initial decision if it does not request an informal conference or if it does not agree with the recommended decision resulting from the informal conference?

(a) If the Indian Tribe decides to appeal, it must file a notice of appeal with the IBIA within 30 days of receiving either the initial decision or the recommended decision from the informal conference.

(b) The Indian Tribe may either hand-deliver the notice of appeal to the IBIA, or mail it by certified mail, return receipt requested. If the Indian Tribe mails the Notice of Appeal, it will be considered filed on the date the Indian Tribe mailed it by certified

42 CFR Ch. I (10-1-10 Edition)

mail. The Indian Tribe should mail the notice of appeal to: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

(c) The Notice of Appeal must:

(1) Briefly state why the Indian Tribe thinks the initial decision is wrong;

(2) Briefly identify the issues involved in the appeal; and

(3) State whether the Indian Tribe wants a hearing on the record, or whether the Indian Tribe wants to waive its right to a hearing.

(d) The Indian Tribe must serve a copy of the notice of appeal upon the official whose decision it is appealing. The Indian Tribe must certify to the IBIA that it has done so.

(e) The authorized representative of the Secretary will be considered a party to all appeals filed with the IBIA under the Act.

(f) In lieu of filing an administrative appeal an Indian Tribe may proceed directly to Federal court pursuant to section 110 of the Act [25 U.S.C. 450m-1].

§ 137.426 May an Indian Tribe get an extension of time to file a notice of appeal?

Yes, if the Indian Tribe needs additional time, the Indian Tribe may request an extension of time to file its Notice of Appeal with the IBIA within 60 days of receiving either the initial decision or the recommended decision resulting from the informal conference. The request of the Indian Tribe must be in writing, and must give a reason for not filing its notice of appeal within the 30-day time period. If the Indian Tribe has a valid reason for not filing its notice of appeal on time, it may receive an extension.

§ 137.427 What happens after an Indian Tribe files an appeal?

(a) Within 5 days of receiving the Indian Tribe's notice of appeal, the IBIA will decide whether the appeal falls under § 137.415. If so, the Indian Tribe is entitled to a hearing.

(b) If the IBIA cannot make that decision based on the information included in the notice of appeal, the IBIA may ask for additional statements