

§ 29.904

(c) *Selection and award decisions for discretionary or competitive grants.* The Department's selection and level of funding decisions for discretionary or competitive grants are not subject to appeal.

PRE-AWARD DECISIONS

§ 29.904 What are pre-award decisions that a Tribe may appeal?

A Tribe may appeal pre-award decisions, which include:

- (a) A decision whether to include a Department program in a funding agreement;
- (b) A decision whether an activity is an inherent Federal function;
- (c) A decision on a final offer before the Department and the Tribe enter into a compact or funding agreement;
- (d) A decision on a final offer before the Department and the Tribe execute an amendment modifying the terms of an existing compact or funding agreement; and
- (e) An eligibility determination.

§ 29.905 To whom does a Tribe appeal a pre-award decision?

A Tribe appeals a pre-award decision in accordance with the process in § 29.907 to a hearing official who was not involved in the initial decision and is appointed by the General Counsel of the Department.

§ 29.906 Must a Tribe exhaust its administrative remedies before initiating a civil action against the Department in the U.S. District Courts for a pre-award decision?

A Tribe must exhaust its administrative remedies before initiating a civil action against the Department in the U.S. District Courts, except a Tribe may appeal the rejection of a final offer directly to the U.S. District Courts in lieu of an administrative appeal.

§ 29.907 When and how must a Tribe appeal a pre-award decision?

(a) Unless a Tribe appeals, a pre-award decision becomes final 30 days after receipt by the Tribe. To appeal the pre-award decision, a Tribe must submit a written request to the Office of the General Counsel and the Self-Governance Official within 30 days of

49 CFR Subtitle A (10-1-24 Edition)

receiving the pre-award decision. The request must include a statement describing the reasons for appeal and any supporting documentation.

(b) The Tribe may request to resolve the dispute using an alternative dispute resolution process before the hearing official issues a decision.

§ 29.908 May a Tribe request an extension of time to file an administrative appeal?

If a Tribe needs additional time, it may request an extension of time to file an appeal of a pre-award decision. Within 30 days of receiving a decision, a Tribe must request the extension from the Office of the General Counsel, which has the discretion to grant the extension, and notify the Self-Governance Official of the request. The request must be in writing and give a reason for not filing its administrative appeal within the 30-day period. The Department may accept an appeal after the 30-day period for good cause.

§ 29.909 When and how must the hearing official respond to the Tribe's appeal?

(a) The hearing official must issue a decision in writing within 60 days of the receipt of the appeal. If the Tribe requests an informal hearing, the hearing official must issue a decision within 60 days of the hearing.

(b) All decisions issued by the hearing official must include a statement describing the rights of a Tribe to appeal the decision to the U.S. District Courts. The Department must provide the decision to the Tribe by any method that provides a receipt.

§ 29.910 What is the Department's burden of proof for appeals of pre-award decisions?

The Department must demonstrate by clear and convincing evidence the validity of a pre-award decision, and that the decision is consistent with 23 U.S.C. 207.

§ 29.911 What is the effect of a pending appeal on negotiations?

A pending appeal of a pre-award decision will not prevent the Department from negotiating and executing the non-disputed, severable provisions of a