

TITLE 16  
ADMINISTRATIVE PROCEDURES  
CROW TRIBAL ADMINISTRATIVE PROCEDURES ACT11

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11 ADOPTED BY THE CROW LEGISLATURE AS BILL NO. CLB02-12, ON MARCH 12, 2002, BY A VOTE OF 15 IN FAVOR, 0 OPPOSED, AND 1 ABSTAINING. APPROVED BY CHAIRMAN CLIFFORD BIRDINGROUND WITHOUT DATE.

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ADMINISTRATIVE PROCEDURES ACT  
FOR  
THE CROW TRIBE

BE IT ENACTED BY THE LEGISLATIVE BRANCH OF THE CROW TRIBE THAT  
this Administrative Procedures Act, be numbered as, and read as follows:

**PART I. SHORT TITLE, AUTHORITY**

SECTION 1. SHORT TITLE. This Act may be referred to as the Tribal Administrative Procedures Act or “TAPA.”

SECTION 2. AUTHORITY. This Act is enacted pursuant to:

- (1) The Constitution of the Crow Tribe acknowledged by the Secretary of the Interior, \_\_\_\_\_(Date), \_\_\_\_\_Article, \_\_\_\_\_Section, \_\_\_\_\_Subsections;  
and
- (2) The Indian Civil Rights Act of 1968, 25 U.S.C. Section 1302(8).

**PART II. FINDINGS AND POLICY**

SECTION 3. FINDINGS. The Crow Tribal Government finds:

- (1) The self-governing capabilities and the political and economic integrity of the Crow Tribe (hereafter “the Tribe”) and Crow Reservation will be strengthened and enhanced by the establishment of administrative procedures for rulemaking and for contested cases involving the granting, denial or revocation of licenses, permits, benefits, or privileges;  
and,
- (2) Administrative procedures for rulemaking and for the hearing and deciding of contested cases will assist in assuring the protection of the health, safety, and welfare of Tribal members and of all persons residing or doing business within the Crow Reservation by formalizing Tribal guarantees that no person within Tribal jurisdiction shall be deprived of liberty or property by Tribal governmental action without due process of law.

SECTION 4. DECLARATION OF POLICY.

It is the policy of the Crow Tribal Government to provide fair, open, and equitable procedures to guide and govern the exercise of its regulatory powers and to make available an opportunity for hearing and for subsequent judicial review to every person aggrieved by a regulatory action of a Tribal agency.

**PART III. GENERAL PROVISIONS**

SECTION 5. DEFINITIONS. For the purposes of this Act:

- (1) “**Agency**” means any board, bureau, commission, committee, department division, program or officer of the Crow Tribe, whether or not it, or he(she) is subject to review by another Tribal agency, which is authorized by law to confer or deny a benefit, to exact a penalty or sanction, to determine contested cases, or to enter into contracts, provided that the provisions of this Act do not apply to the following:
  - (a) the Crow Tribal Executive or Legislative Branches;
  - (b) the Tribal Court;

- (c) the supervision and administration of the custody, care, control, or treatment of youths, patients, or prisoners;
- (d) the Personnel Department or Tribal personnel matters;
- (e) any school, college, or training institution authorized, operated, managed, regulated, funded, or chartered by Tribal government or any agency thereof;
- (f) any business or non-profit corporation or any partnership, association, firm, or enterprise organized under the Constitution or laws of the Tribe except the Crow

Housing Authority, which is not exempt from the provisions of this Act;

- (g) Any function of Tribal government exercised in connection with the enforcement of fish and wildlife regulations.

(2) **“agency action”** includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act;

(3) **“adjudication”** means administrative process for the formulation of an order;

(4) **“contested case”** means any administrative proceeding in which a determination of the legal rights, duties, or privileges of a party is made after adequate notice and an opportunity to be heard;

(5) **“ex parte communication”** means an oral or written communication not on the public record with respect to which reasonable prior notice is not given to all parties, but it shall not include requests for status reports on any matter or proceeding covered by this Act;

(6) **“license”** includes the whole or any part of an agency permit, certificate, approval, registration, or other form of permission required by law. **“Licensing”** includes the agency process respecting the grant renewal, denial, revocation, suspension, annulment; withdrawal, limitation, modification, or conditioning of a license;

(7) **“order”** means the whole or part of a final administrative disposition whether in affirmative, negative, injunctive, or declaratory for or in a matter other than rule making

(8) **“party”** includes a person or agency named or admitted as a party or properly seeking and entitled as a right to be admitted as a party in an administrative proceeding;

(9) **“person”** includes an individual, partnership, corporation, association or public or private organization other than an agency, without regard to the Tribal Affiliation, if any, of the individual or entity;

(10) **“Public”** includes all persons residing or doing business within the Crow Reservation,

(11) **“personal property”** includes property that is not land, buildings, mines, or forests. It is possessions that can be moved;

(12) **“relief”** includes the whole or part of an agency:

(a) grant of money, assistance, license, authority, exemption, exception, privilege or remedy;

(b) recognition of a claim, right, immunity, privilege, exemption, variance, or exception; or

(c) taking of other action on the application or petition of, and beneficial to, a person,

(14) **“rule”** means each regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedures of an agency. The term includes amendment or repeal of a prior rule. Any rule adopted in accordance with this Act, for the purpose of implementing or interpreting a Tribal law or authorizing rulemaking has the force of law. Any rule not adopted according to

this Act is invalid and

(15) “**sanction**” includes the whole or any part of an agency:

- (a) withholding of relief;
- (b) imposition of a penalty or fine;
- (c) seizure or withholding of personal property;
- (d) assessment of damages, reimbursement, restitution, costs, compensation, charges, or fees;
- (e) revocation or suspension of a license; or
- (f) taking other compulsory or restrictive action.

**SECTION 6. INFORMATION AND PRIVACY.**

(1) Each agency shall make available to the public, information follows:

- (a) Unless otherwise required by federal or Tribal law, each agency shall separately state:
    - (i) a description of its organization, the method by which its functions are channeled, the nature of the requirements of its formal and informal procedures, and the places at which, from whom, and the methods whereby, the public may obtain information, make requests, or obtain decisions;
    - (ii) rules of procedure, insofar as such rules may supplement the provisions of this Act, and descriptions of forms available;
    - (iii) substantive rules of general applicability adopted as authorized by this Act;
- and
- (iv) each amendment, revision, or repeal of the foregoing.

(b) Upon adoption, amendment, or repeal of a rule and with the filing of the same with the Office of the-Secretary of the Crow Tribe, each agency shall cause to be published in at least one newspaper of general circulation within the Crow Reservation, a notice of the adoption amendment or repeal of a rule, the effective date, a brief explanation of the substance of any rule adopted, amended, or repeal adopted, the name and mailing address of the Tribal employee from whom the complete text of the rule or amendment may be obtained, and a schedule of fees, if any are required by the agency for costs of reproduction and mailing of the requested materials.

(c.) Except to the extent that a person has actual and timely notice of the terms of any adopted rule or amendment person may not be adversely affected by a rule or amendment thereof the notice of which is required to be published and was not so published. Each agency shall make available for public inspection and copying final orders made in the administrative adjudication of cases.

- (2) This section does not apply to matters that are:
- (a) trade secrets or commercial, financial, or industrial information obtained from a person and privileged or confidential;
  - (b) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:
    - (i) interfere with enforcement proceedings;
    - (ii) tend to deprive, a person of a fair trial or an impartial adjudication;
    - (iii) constitute an unwarranted invasion of personal privacy
    - (iv) disclose the identity of a confidential source; or
    - (v) endanger the physical safety of law enforcement personnel
  - (c) contained in or related to the files, documents, or work product of an attorney, paralegal, or court advocate employed-by or retained by the Tribe;
  - (d) contained in or related to examination, condition, or operating reports prepared by, on behalf of, or for the use of any financial institution affiliated with or doing business with the Tribe;
    - (e) geological, geophysical, or hydrological information and data, including maps, with respect to any resource or potential resource in which the Tribe has or may have an interest; provided, however, that this subsection does not apply to information collected, or to plans, reports, licenses, or orders prepared or issued pursuant to Tribal law protecting the Reservation environment or providing for Reservation-wide management of any natural resource;
  - (f) any record about an individual that is maintained by an agency, including, but not limited to the individual's Tribal enrollment; education, financial transactions, medical history, and criminal or employment history, and that contains his (her) name or any identifying symbol, which record is kept in an agency system or records, unless such record is:
    - (i) requested by the individual or disclosure is made with his (her) prior written consent;
    - (ii) requested by another agency for a purpose compatible with the purpose for which the record was collected;
    - (iii) requested by another agency or by an instrumentality of the United States Government for a civil or criminal law enforcement activity if the activity is authorized by law;
    - (iv) disclosed to a requesting person upon a showing of compelling

circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

- (v) requested or ordered by the Crow Tribal Hearings Examiner or
  - (vi) pursuant to the lawful order of a court of competent jurisdiction.
- (g) Any reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions, which are exempt under this subsection.
- (h) Any individual may, upon request; gain access to and a copy of any information about him (her) contained in an agency system of records, and may further request amendment of a record pertaining to him (her). Upon receipt of such request for amendment of a record, an agency shall either make the requested correction or, within 15 days of the request, inform the individual of the agency's refusal to amend the record, together with the grounds therefor.
- (i) This section does not authorize withholding of information or limit the availability of records to the public except as specifically stated.
- (j) On the properly filed complaint of an aggrieved person, the Tribal Court has jurisdiction to enjoin an agency from withholding agency records or from refusing to amend agency records and to order the production of records, improperly withheld or the amendment of records improperly refused amendment

#### **PART IV. RULEMAKING -**

##### **SECTION 7. ROLES OF AGENCIES AND OF THE CROW LEGISLATIVE BRANCH**

(1) Except as provided in Section 6, nothing in this Act confers authority upon, or augments the authority of; any Tribal agency to adopt; administer, or enforce any rule.

(2) The authority to adopt, amend, or repeal a substantive rule of any agency implementing any act authorizing the adoption of rules resides wholly with the Crow Tribal Legislative Branch, provided, however:

- (a) no proposed rule shall be adopted, amended, or repealed unless:
  - (1) the agency affected has recommended the adoption, amendment, or repeal; or
  - (ii) the Crow Tribal Legislative Branch has considered the recommendation or absence of a recommendation for adoption, amendment or repeal by the affected agency and has determined by a majority vote that the interests of the Tribe and of its members would best be served by modification or rejection of the agency recommendation or by the proposal of a rule in the absence of agency recommendation, and the Secretary of the Crow Tribal Legislative Branch has notified the affected agency in writing of the Legislature's determination

- (b) The Crow Tribal Legislative Branch may delegate all or part of its rulemaking authority hereunder to an affected agency by adopting an appropriate act; ordinance- or amendment so providing. In the event of such a delegation, all rulemaking procedures prescribed in this Act for the Tribal Legislative Branch shall be binding upon the agency.

SECTION 8. NOTICE AND PUBLICATION.

- (1) Prior to adopting any substantive rule of general applicability, which is not a rule relating to internal procedures or management practices or an emergency rule, as provided in subsection (6) of this Section, the Crow Tribal Legislative Branch, or the affected agency to which the Crow Tribal Legislative Branch has properly delegated authority, shall conduct a public hearing(s) thereon. At such hearing written comment on the proposed rule may be submitted by any interested person, and oral comment shall be received from any person submitting a notice of intention to comment not later than (3) three days prior to the date of the hearing. The Crow Tribal Legislative Branch or its properly authorized agency may fix a time limit for the duration of each oral comment.
- (2) Notice of the proposed rule and the hearing thereon shall be prepared and distributed as follows:
  - (a) Not later than 30 days prior to the date set for public hearing, the affected agency shall prepare the number of copies of a proposed rule requested by interested persons (in no case fewer than ten (10) copies), and an equal number of copies of a brief written explanation of the intent of the proposal, its effect if adopted, and the date, time and place of the hearing. Not later than 25 days prior to the hearing date, a copy of the proposed rule and a copy of the explanation shall be mailed to each person filing a request with the agency or with the Crow Tribal Legislative Secretary for such notification.
  - (b) Not later than 25 days before the date set for the public hearing, the agency shall cause notice of the proposed rule and of the hearing thereon to be published once a week for two consecutive weeks in a local newspaper (if daily) of general circulation or if weekly will cause notices to be posted on the Crow Reservation.
    - (c) Such notice(s) shall include:
      - (i) the subject of the proposed rule;
      - (ii) the date, time, and place of the public hearing to be conducted thereon;
      - (iii) the mailing address of the person and place from which a copy of the full

text of the proposal and the explanation thereof may be obtained by any interested person, and

(iv) the date and place for submission of written comment and for submission of a request to make an oral comment at the hearing.

(3) Persons making oral comment at the hearing shall be subject to questioning relevant to the testimony by Crow Tribal Legislative Branch or its designated representative.

(4) A rule promulgated pursuant to this section shall become effective thirty (30) days after it is adopted and filed with the Office of the Secretary of the Crow Tribal Executive Branch.

(5) Immediately upon adoption and filing of a rule the affected agency shall cause to be published as provided in subsection (b) of this section, notice of the adoption, filing, the effective date of the rule, and the mailing address from which a complete text of the rule may be obtained.

(6) If the Crow Tribal Legislative Branch finds that an imminent peril to the Tribal health, safety, or welfare requires adoption of a rule upon less notice than provided in this section and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing it deems practicable, to adopt an emergency rule. The rule will take effect immediately upon adoption and may for a period not longer than one hundred twenty (120) days, from the date of its filing with the Office of the Secretary of the Crow Tribal Executive Branch but the adoption of an identical rule pursuant to the procedures provided in this section is not precluded. Authority to promulgate an emergency rule shall not be delegated by the Crow Tribal Legislative Branch to an agency.

#### SECTION 9. REQUISITES FOR VALIDITY.

(1) The Crow Tribal Legislative Branch or an authorized agency shall only consider fully written and oral submissions made with regard to a proposed rule. Upon adoption of this rule the affected agency shall issue a concise statement of the principal reasons for and

against its adoption, which shall be provided without charge to any requesting person.

When no written or oral submissions have been received, the statement of reasons may be omitted.

(2) To be effective, each substantive rule adopted must be in accordance with standards prescribed by the Tribal Constitution and applicable federal law.

(3) No rule is valid unless adopted in compliance with the notice and publication provisions of this Act.

SECTION 10. PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF A RULE.

Any interested person who is a member of the public as defined in Section 5(9) of this Act may petition the Crow Tribal Legislative Branch requesting the promulgation, amendment, or repeal of a rule. Within 30 days after submission of a petition, the Crow Tribal Legislative Branch shall either secure from the affected agency a recommendation respecting the disposition of the request-or shall deny the petition in writing, stating the reasons for the denial, or shall initiate rulemaking proceedings in accordance with this Act.

SECTION 11. FILING AND DISSEMINATION.

(I) Each agency shall file with the Office of the Secretary of the Crow Tribal Executive Branch, the Tribal Court, and the Tribe's General Legal Counsel, a copy of each rule adopted by the Crow Tribal Legislative Branch or by the agency, if authorized, affecting the activities of that agency.

(2) The Secretary of Crow Tribal Executive Branch shall keep and maintain a permanent register or file of all rules filed, including superseded and repealed rules, which shall be open to public inspection and shall provide copies of any rule upon request of any person.

Unless otherwise provided by this Act, the Secretary of the Crow Tribal Executive Branch may require payment of the cost of providing such copies.

SECTION 12. CROW TRIBAL LEGISLATIVE BRANCH REVIEW OF A RULE RECOMMENDED BY AN AFFECTED AGENCY.

(1) Upon the filing by an affected agency of a recommended rule with the Secretary of the Crow Tribal Executive Branch, the Crow Tribal Legislative Branch shall review such recommendation and direct the recommending agency to (1) prepare proposed rules; (2) delay or withdraw the recommendation in whole or in part (3) amend its recommendation; or (4) recommend a substitute or additional rule, as provided in Section 7.

(2) Upon request of the Crow Tribal Legislative Branch, a recommending agency shall prepare a statement of the estimated economic impact of the adoption, amendment, or repeal of a rule as proposed. The statement must include an estimate of:

- (a) the cost to the Tribe of administering and enforcing the rule; and
- (h) any estimated benefit or detriment of compliance to affected persons.

**PART V. HEARINGS OFFICERS**

SECTION 13. APPOINTMENT OF HEARINGS OFFICERS - TERM.

The Chief Executive Officer (CEO) of the Crow Tribe shall appoint one person to be the Senior Hearings Officer and another to be Alternate Hearings Officer, each to serve for a term of two years. Before these appointments are effective they must be concurred by the Crow Tribal Legislative -Branch. These appointments shall be supervised by the Crow Tribal CEO using the Tribal Personnel System.

SECTION 14. QUALIFICATIONS.

In hiring, the Tribal CEO shall consider the following qualifications:

- (1) education or experience in the application of administrative law and procedures;
- (2) education or experience in conducting contested case hearings;
- (3) writing skills and ability to summarize findings of fact and conclusions of law;
- (4) substantive knowledge or experience in a discipline or field of expertise related to activities licensed by an agency; and
- (5) familiarity with the Tribal Administrative structure and laws.

SECTION 15. COMPENSATION AND REIMBURSEMENT.

Hearings Officers may receive such compensation for services rendered as the Crow Legislative Branch may provide at the time of their appointment, and shall be entitled to reimbursement for travel and per diem expenses incurred by reason of attendance at meetings, conferences, training sessions or seminars related to the hearing of contested cases or to administrative law and procedures.

SECTION 16. VACANCIES AND REMOVAL.

(1) A vacancy occurring in US position of Senior Hearings Officer or Alternate Hearings Officer, other than by expiration of a term, shall be filled by the Tribal CEO by appointment, for the remainder of the unexpired term.

(2) A Hearings Officer may be removed by the CEO for cause, after due notice to the Officer and an adequate opportunity to be heard

SECTION 17. TEMPORARY HEARINGS OFFICER

In the event of the disqualification or unavoidable absence of both Hearings Officers, the Tribal CEO may appoint a Temporary Hearings Officer to hear a contested case. Such appointment shall expire

upon the issuance of a final order or decision in the contested case unless the Tribal Court; in *the* case of an appeal, remands the case to the Temporary Hearings Officer for further findings or conclusions. The appointment of a Temporary Hearings Officer shall be made upon such qualifications and conditions as the CEO deems advisable.

#### SECTION 18. DUTIES OF THE SENIOR HEARINGS OFFICER.

The Senior Hearings Officer shall:

- (1) promulgate rules of practice for contested case hearings;
- (2) receive all applications for hearing of contested cases made pursuant to procedures set forth in this Ordinance and to administrative rules of practice, set times and places for hearings, and assign the Alternate Hearings Officer to preside over a hearing in the event of disqualification or unavoidable absence of the Senior Hearings Officer.
- (3) On or before the third day of January of each year, report, in writing, to the Crow Tribal Legislative Branch:
  - (a) the numbers, types, and disposition of contested cases heard, together with the costs associated with such hearings; and
  - (b) any recommendations the Hearings Officers may have for amendments to Tribal Law or improvement of the administrative procedures of a Tribal Agency.

#### SECTION 19. POWERS AND DUTIES OF HEARINGS OFFICERS.

- (1) A Hearings Officer shall:
  - (a) conduct any hearing on the record and in accord with procedures contained in this Act and prescribed by the rules of practice promulgated pursuant to Section 17, and determine by final order or decision any contested matter so heard; and
  - (b) make complete and accurate records of all proceedings associated with the hearing and disposition of contested cases.
- (2) A Hearings Officer may:
  - (a) require an agency, who is party to the contested case, to provide secretarial services and supplies for purposes of conducting and recording the hearing on the contested case to which such agency is named party;
    - (b) utilize the services of the support staff of the Legal Department or the Tribe's legal counsel for routine clerical activities;
  - (c) take judicial notice of the files, documents, records, and maps of any agency and of files, documents, records, and maps in the custody of the Bureau of Indian Affairs; and
  - (d) exercise all powers necessarily incidental to the Officer's authority to conduct hearings of contested cases and determine their disposition, including the power to issue notice, to issue subpoenas

requiring the attendance of persons and the production of documents, to administer oaths, and to take testimony.

**SECTION 20. DISQUALIFICATIONS.**

- (1) No Hearings Officer is qualified to hear or decide a contested case involving the personal interests of the Officer or of a person in the immediate family of the Officer. "Immediate family" in this context shall mean a spouse, former spouse, or any person related by blood or adoption to the Officer in the first or second degree, or marital in-laws.
- (2) On the filing by a party in good faith of a timely and sufficient affidavit of personal bias, disqualification by law, or other disqualification of the Senior Hearings Officer, the Alternate Hearings Officer shall fill the place and duties of the Senior Hearings Officer at a hearing. The affidavit must state the facts and reasons for the belief that the Senior Hearings Officer should be disqualified and must be filed with the Senior Hearings Officer not less than 10 days before the first hearing in a contested case. The Alternate Hearings Officer may be similarly disqualified. If both Hearings Officers are disqualified, the Tribal CEO shall appoint a Temporary Hearings Officer as provided in Section 17.

**PART VI. ADJUDICATIONS**

**SECTION 21. APPLICATION.**

This Part applies in every case *of* adjudication arising from a claim or protest of a person aggrieved by an agency action, except to the extent that there is involved a matter subject to subsequent trial of the law and the theta de novo in the Tribal Court

**SECTION 22. NOTICE.**

Persons entitled to notice of the hearing of a contested case shall be informed within 15 days of:

- (1) the time, place, and nature of the hearing; and
- (2) the matters of fact and law asserted.

**SECTION 23. ANCILLARY MATTERS.**

- (1). A person compelled to appear in person before a Hearings Officer may be accompanied, represented and advised by legal counsel or other authorized representative employed by said person at his or her own costs. A party is entitled to appear in person, or with counsel, or other authorized representative in a proceeding before a Hearings Officer.
- (2) A Hearings Officer shall issue subpoenas to a party on request or when required by a Hearings Officer on a showing of general relevance and reasonable scope of the evidence sought. The Tribal Court shall sustain a Hearings Officer's subpoena or similar process or demand to the extent that it is found to be in accordance

with law.

- (3) When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances the Hearings Officer may require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.
- (4) A Hearings Officer with like effect as in the case of other final orders, and in the Hearings Officer's sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.
- (5) Disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

#### SECTION 24. EX-PARTE CONSULTATIONS

Unless required for the disposition of ex parte matters authorized by law, no Hearings Officer, after receipt of a petition from an aggrieved person, shall communicate with any party or his representative in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate. Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this Section, the Hearings Officer may, to the extent consistent with the interests of justice and the policy of the underlying laws, require the party to show cause why his claim or interest in the proceeding should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

#### SECTION 25. INITIAL DECISIONS.

(1) A person aggrieved by an adverse or restrictive determination, decision, or order of an agency employee, other than the chief executive officer of the agency, may apply to the chief executive officer of the agency for an initial review and decision. Before the chief executive officer of the agency undertakes an initial review or reaches an initial decision, the parties are entitled to a reasonable opportunity to submit, in writing, for the consideration of the chief executive officer:

- (a) proposed findings and conclusions; and
  - (b) exceptions to the decision or order of the subordinate employee or employees; and
  - (c) supporting reasons for the exceptions or proposed findings and conclusions.
- (2) After due consideration of any submissions so made, and within 15 calendar days of the receipt of such submission, the chief executive of an agency shall issue a written decision in the matter. Such decisions are apart of the record and shall include a statement of:
- (a) findings and conclusions, and the reasons or basis therefore, on all the material issues of fact,

- law, or
  - (b) the ruling on each finding, conclusion or exception proposed Or submitted by any party; and
  - (c) an order, granting or denying relief in whole or in part.
- (3) Such written decision, issued by the chief executive of an agency, shall be provided immediately to the parties and shall be made available for public inspection, and upon such provision and availability becomes an agency action appealable to a Hearings Officer. No other agency activity, tentative determination, plan, proposal, or decision shall be deemed to be an agency action so appealable.

**SECTION 26. PETITION FOR ADMINISTRATIVE HEARING.**

- (1) A person adversely affected by a decision or order of a chief executive officer of an agency may, within 30 days of receipt of the decision or order, file a petition for hearing with the chief executive officer of the agency and with the Secretary of the Crow Tribal Executive Branch Upon receipt of a petition for hearing, the chief executive of the agency shall transmit to the Senior Hearings Officer the petition and the administrative record of the matter including, but not limited to, the order or decision of the chief executive.
- (2) No later than 10 calendar days after the receipt of the petition by the Senior Hearings Officer, the assigned Hearings Officer shall set a schedule for hearing and notify interested persons or parties of the same by certified or registered mail, return receipt requested. The notice to petitioner shall include a copy of the administrative record transmitted to the assigned Hearings Officer. The hearing shall be held within 30 days of the date of notice of schedule unless the time is extended by the Hearings Officer for good cause shown and shall be expedited if required by law or for good cause shown by the petitioner.
- (3) At a minimum, a petition for hearing shall contain:
- (a) the name, mailing address, and telephone number of the petitioner and of the petitioner's authorized representative, if any;
  - (b) the place of organization and the principal place of business; if the petitioner is a business or other entity;
  - (c) a statement of the facts constituting the alleged injury to the petitioner's interests; and
  - (d) the relief requested discretion presented on the record.

**SECTION 27. CONDUCT OF HEARINGS.**

- (1) The record of a hearing before a Hearings Officer shall include:
- (a) the record of the decision of the chief executive of the agency;
  - (b) all notice in the matter given to interested persons and parties, together with evidence of timely

- receipt of such notices by parties;
- (c) all pleadings, motions, and intermediate rulings;
- (d) all evidence received or considered, including a transcript of oral proceedings when demanded by a party;
- (e) a statement of matters officially noticed;
  - (1) proposed findings and exceptions;
  - (g) all staff memoranda or data submitted to the Hearings Officer as evidence in connection with his consideration of the case; and
  - (h) the final order of the Hearings Officer imposing a sanction or granting or denying relief. Costs of the transcription of proceedings shall be paid by the requesting party.
- (2) A Hearings Officer may, with in the scope of his powers;
  - (a) administer oaths and affirmations;
    - (b) issue subpoenas as provided in this Act
    - (c) rule on the relevancy, materiality, and redundancy of evidence;
    - (d) regulate the course of the hearing;
  - (e) call conferences for the settlement or simplification of the issues by consent of the parties;
    - (f) cause depositions to be taken on his own motion or at the request of a party; and
    - (g) dispose of procedural requests or similar matters.
- (2) The proponent of an order has the burden of proof. Any oral or documentary evidence may be received, but the Hearings Officer as a matter of policy, shall provide for the exclusion of irrelevant material or unduly repetitious evidence. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but is not sufficient in and of itself to support a finding unless it is admissible over objection under the Federal Rules of Evidence.
- (4) A sanction may not be imposed or order issued except on consideration of the whole record of those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to conduct such cross-examination as may be required for a full and true disclosure of the facts.

**SECTION 28. FINAL ORDERS.**

- (1) A final order or decision shall include findings of fact and conclusions of law, separately stated.
- (2) Findings of facts shall be based exclusively on the evidence and on matters officially noticed.
- (3) Each conclusion of law shall be supported by authority or by a reasoned opinion.
- (4) If a party submitted proposed findings of facts, the decision shall include a ruling upon each proposed

finding.

- (5) Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.
- (6) Senior Hearings Officer shall index and file with the Office of the Secretary of the Crow Tribal Executive Branch all final decisions and orders, including declaratory rulings. No decisions or orders of a Hearings Officer is valid or effective against any person or party nor may it be invoked by any agency for any purpose until invoked by any agency for purpose until it has been so filed and made available for public inspection. This provision is not applicable in favor of any person or party who has actual knowledge of a decision or order or when public disclosure of a decision or order is prohibited by law.

#### SECTION 29. JUDICIAL REVIEW.

- (1) Upon the proper filing and availability for public inspection of a final order or decision of a Hearing Officer any person aggrieved by such decision or order shall be conclusively presumed to have exhausted all the administrative remedies made available to aggrieved persons by the Crow Tribe, and such aggrieved person is entitled to judicial review in the Tribal Court. This section does not limit utilization or the scope of, judicial review available under other means of review, redress, relief, or trial de novo provided by Tribal law.
  - (a) a party who proceeds before a Hearings Officer under the terms of a particular Tribal Law or implementing rule shall not be precluded from questioning on judicial review the validity of the law or rule in Tribal Court, but such party may not raise any other question not raised before the Hearings Officer unless it is shown to the satisfaction of the Court that there was good cause for failure to raise the question before the Hearings Officer.
  - (b) Proceedings for review in Tribal Court shall be initiated by:
    - (i) filing a Notice of Appeal with the Hearings Officer within twenty (20) days after service of the final decision or order; and
    - (ii) filing a petition for review with the Tribal Court within thirty (30) day after service of the final order or decision of the Hearings Officer. Copies of the petition shall be promptly fly served upon the agency affected and upon all parties of record.
  - (c) Unless otherwise provided by law, the filing of a Notice of Appeal or of a petition shall not stay enforcement of the decision or order of the Hearings Officer. The affected agency may grant or the reviewing court may order a stay upon terms which it considers proper.
  - (d) A petition for Tribal Court review shall include a statement of the manner in which petitioner is aggrieved, and the ground or grounds upon which petitioner contends he (she) is entitled to relief.

The petition shall demand the relief to which the petitioner believes he (she) is entitled and the demand for relief may be in the alternative.

(e) Within fifteen (15) days after receipt of a notice of appeal, the Hearings Officer shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be charged by the Court for the additional costs. The Court may require or permit subsequent corrections or additions to the record.

(2) If application is made to the Court, within ten (10) days prior to the date set for Court hearing on review, for leave to present additional evidence, alleging that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Hearings Officer, the Hearings Officer may modify the findings and conclusions by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing Court.

(3) The review shall be conducted by the Court shall be confined to the record. In cases of alleged irregularities of procedure before the Hearings Officer not shown in the record proof thereof may be taken in the Court. The Court, upon request, shall hear oral argument and receive written briefs.

(a) The Tribal Court may not substitute its judgment for that of the Hearings Officer unless substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (i) in violation of applicable constitutional or statutory law;
- (ii) in excess of the delegated authority of the affected agency
- (iii) made upon unlawful procedure;

(iv) substantially affected or prejudiced by other error of law;

- (v) clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record;
- (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (vii) because findings of fact, upon issues essential to the decision were not made although requested.

### SECTION 30. IMPOSITION OF SANCTIONS.

(1) This section applies, except as otherwise provided in this Act, to the exercise of executive or management power

or authority by any employee, officer, director, or manager. of the government of the Crow Tribe when acting in his or her executive or managerial capacity.

- (2) A sanction may not be imposed or a substantive rule or order issued except within the authority delegated to the agency or to the individual executive and as authorized by law.
- (3) Except in cases in which the public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license or of a benefit or entitlement is lawful only if, before the institution of administrative proceedings therefore, the licensee or beneficiary has been given:
  - (a) timely notice by the agency in writing of the facts or conduct which may warrant the action; and
  - (b) the opportunity to demonstrate or achieve compliance with all lawful requirements.
- (4) When a licensee has made timely and sufficient application for a renewal or new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

SECTION 31. SEVERABILITY.

In the event of a competent court finding of invalidity of any word, phrase, paragraph, or section, such invalid work, phrase, paragraph or section shall be severed from the remaining body of the Act, and the remainder of the Act shall remain in full force and effect.