

§ 1000.280

against the United States and are subject to the limitations and restrictions of FTCA.

§ 1000.280 What employees are covered by FTCA for medical-related claims?

The following employees are covered by FTCA for medical-related claims:

- (a) Permanent employees;
- (b) Temporary employees;
- (c) Persons providing services without compensation in carrying out a contract;
- (d) Persons required because of their employment by a self-governance Tribe/Consortium to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the Tribe/Consortium); and,
- (e) Federal employees assigned to the AFA.

§ 1000.281 Does FTCA cover employees of the Tribe/Consortium who are paid by the Tribe/Consortium from funds other than those provided through the self-governance AFA?

Yes, FTCA covers employees of the Tribe/Consortium who are not paid from AFA funds as long as the services out of which the claim arose were performed in carrying out the self-governance AFA.

§ 1000.282 May persons who are not Indians or Alaska Natives assert claims under FTCA?

Yes, non-Indian individuals served under the self-governance AFA, may assert claims under this Subpart.

§ 1000.283 If the Tribe/Consortium or Tribe's/Consortium's employee receives a summons and/or a complaint alleging a tort covered by FTCA, what should the Tribe/Consortium do?

As part of the notification required by 28 U.S.C. 2679(c), if the Tribe/Consortium or Tribe's/Consortium's employee receives a summons and/or complaint alleging a tort covered by FTCA, the Tribe/Consortium should immediately:

- (a) Inform the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW., Washington, DC 20240,

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- (b) Inform the Tribe's/Consortium's tort claims liaison, and

- (c) Forward all of the materials identified in §1000.277(c) to the contacts given in §1000.283 (a) and (b).

Subpart M—Reassumption

§ 1000.300 What is the purpose of this subpart?

This subpart explains when the Secretary can reassume a program without the consent of a Tribe/Consortium.

§ 1000.301 When may the Secretary re-assume a Federal program operated by a Tribe/Consortium under an AFA?

The Secretary may reassume any Federal program operated by a Tribe/Consortium upon a finding of imminent jeopardy to:

- (a) A physical trust asset;
- (b) A natural resource; or
- (c) Public health and safety.

§ 1000.302 “What is imminent jeopardy” to a trust asset?

Imminent jeopardy means an immediate threat and likelihood of significant devaluation, degradation, damage, or loss of a trust asset, or the intended benefit from the asset caused by the actions or inactions of a Tribe/Consortium in performing trust functions. This includes disregarding Federal trust standards and/or Federal law while performing trust functions if the disregard creates such an immediate threat.

§ 1000.303 What is imminent jeopardy to natural resources?

The standard for natural resources is the same as for a physical trust asset, except that a review for compliance with the specific mandatory statutory provisions related to the program as reflected in the funding agreement must also be considered.

§ 1000.304 What is imminent jeopardy to public health and safety?

Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or

death, caused by Tribal action or inaction or as otherwise provided in an AFA.

§ 1000.305 In an imminent jeopardy situation, what must the Secretary do?

In an imminent jeopardy situation, the Secretary must:

(a) The Secretary must immediately notify the Tribe/Consortium in writing following discovery of imminent jeopardy; or

(b) If there is an immediate threat to human health, safety, or welfare, the Secretary may immediately reassume operation of the program regardless of the timeframes specified in this subpart.

§ 1000.306 Must the Secretary always reassume a program, upon a finding of imminent jeopardy?

Yes, the Secretary must reassume a program within 60 days of a finding of imminent jeopardy, unless the Secretary's designated representative determines that the Tribe/Consortium is able to mitigate the conditions.

§ 1000.307 What happens if the Secretary's designated representative determines that the Tribe/Consortium cannot mitigate the conditions within 60 days?

The Secretary will proceed with the reassumption in accordance with this subpart by sending the Tribe/Consortium a written notice of the Secretary's intent to reassume.

§ 1000.308 What will the notice of reassumption include?

The notice of reassumption under § 1000.307 will include all of the following items. In addition, if resources are available, the Secretary may offer technical assistance to mitigate the imminent jeopardy.

(a) A statement of the reasons supporting the Secretary's finding.

(b) To the extent practical, a description of specific measures that must be taken by the Tribe/Consortium to eliminate imminent jeopardy.

(c) A notice that funds for the management of the trust asset, natural resource, or public health and safety found to be in imminent jeopardy may not be reallocated or otherwise trans-

ferred without the Secretary's written consent.

(d) A notice of intent to invoke the return of property provision of the AFA.

(e) The effective date of the reassumption if the Tribe/Consortium does not eliminate the imminent jeopardy. If the deadline is less than 60 days after the date of receipt, the Secretary must include a justification.

(f) The amount of funds, if any, that the Secretary believes the Tribe/Consortium should refund to the Department for operation of the reassumed program. This amount cannot exceed the amount provided for that program under the AFA and must be based on such factors as the time or functions remaining in the funding cycle.

§ 1000.309 How much time will a Tribe/Consortium have to respond to a notice of imminent jeopardy?

The Tribe/Consortium will have 5 days to respond to a notice of imminent jeopardy. The response must be written and may be mailed, telefaxed, or sent by electronic mail. If sent by mail, it must be sent by certified mail, return receipt requested; the postmark date will be considered the date of response.

§ 1000.310 What information must the Tribe's/Consortium's response contain?

(a) The Tribe's/Consortium's response must indicate the specific measures that the Tribe/Consortium will take to eliminate the finding of imminent jeopardy.

(b) If the Tribe/Consortium proposes mitigating actions different from those prescribed in the Secretary's notice of imminent jeopardy, the response must explain the reasons for deviating from the Secretary's recommendations and how the proposed actions will eliminate imminent jeopardy.

§ 1000.311 How will the Secretary reply to the Tribe's/Consortium's response?

The Secretary will make a written determination within 10 days of the Tribe's/Consortium's written response as to whether the proposed measures will eliminate the finding of imminent jeopardy.