

§ 1000.429 What statutes and regulations govern resolution of disputes concerning signed AFAs or compacts that are appealed to IBCA?

Section 110 of Pub. L. 93-638 (25 U.S.C. 450 m-1) and the regulations at 25 CFR 900.216-900.230 apply to disputes concerning signed AFAs and compacts that are appealed to the IBCA, except that any references to the Department of Health and Human Services are inapplicable. For the purposes of such appeals:

(a) The terms “contract” and “self-determination contract” mean compacts and AFAs under the Tribal Self-Governance Act; and

(b) The term “Tribe” means “Tribe/Consortium”.

§ 1000.430 To whom are appeals directed regarding reassumption for imminent jeopardy?

Appeals regarding reassumption of Title I-eligible PFSAs are handled by the IBIA under those procedures set out in 25 CFR 900.171 through 900.176. Appeals regarding reassumption of PFSAs that are not Title I-eligible are handled by the IBCA under those procedures set out in 43 CFR part 4.

§ 1000.431 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?

Yes, EAJA claims against the DOI will be heard by IBIA or IBCA, as appropriate, under 43 CFR 4.601 through 4.619, Equal Access to Justice Act (Pub. L. No. 96-481, 92 Stat. 2325, as amended), section 504 of Title 5 U.S.C. and Section 2412 of Title 28 U.S.C.

§ 1000.432 To whom may a Tribe appeal a decision made before the AFA or an amendment to the AFA or compact is signed?

(a) *Title I-eligible PFSAs pre-award disputes.* For Title I-eligible PFSAs disputes, appeal may only be filed with IBIA under the provisions set forth in 25 CFR 900.150(a) through (h), 900.152 through 900.169.

(b) *Other pre-award disputes.* For all other pre-award disputes, including those involving PFSAs that are not Title I-eligible, appeals may be filed with the bureau head/Assistant Secretary or IBIA as noted below. However, the Tribe/Consortium may not

avail itself of both paths for the same dispute.

(1) *Bureau head/Assistant Secretary appeal.* Unless the initial decision being appealed is one that was made by the bureau head (those appeals are forwarded to the appropriate Assistant Secretary—see § 1000.433(c) of this subpart), the bureau head will decide appeals relating to these pre-award matters, that include but are not limited to disputes regarding:

(i) PFSAs that are not Title I-eligible;

(ii) Eligibility for the applicant pool of self-governance Tribes;

(iii) BIA residual functions;

(iv) Decisions declining to provide requested information as addressed in § 1000.172 of this part;

(v) Allocations of program funds when a dispute arises between a Consortium and a withdrawing Tribe; and

(vi) Inherently Federal functions.

(2) *IBIA appeal.* The Tribe/Consortium may choose to forego the administrative appeal through the bureau or the Assistant Secretary, as described in the paragraph (b)(1) of this section, and instead appeal directly to IBIA. The standard of review for such IBIA appeals will be an “abuse of discretion” standard.

§ 1000.433 When and how must a Tribe/Consortium appeal an adverse pre-award decision?

(a) If a Tribe/Consortium wishes to exercise its appeal rights under § 1000.432(b)(1), it must make a written request for review to the appropriate bureau head within 30 days of receiving the initial adverse decision. In addition, the Tribe/Consortium may request the opportunity to have a meeting with appropriate bureau personnel in an effort to clarify the matter under dispute before a formal decision by the bureau head.

(b) The written request for review should include a statement describing its reasons for a review, with any supporting documentation, or indicate that such a statement or documentation will be submitted within 30 days. A copy of the request must also be sent to the Director of the Office of Self-Governance.

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(c) If the initial decision was made by the bureau head, any appeal shall be directed to the appropriate Assistant Secretary. If a Tribe does not request a review within 30 days of receipt of the decision, the initial decision will be final for the Department.

§ 1000.434 When must the bureau head (or appropriate Assistant Secretary) issue a final decision in the pre-award appeal?

Within 30 days of receiving the request for review and the statement of reasons described in §1000.433, the bureau head or, where applicable, the appropriate Assistant Secretary must:

- (a) Issue a written final decision stating the reasons for the decision; and
- (b) Send the decision to the Tribe/Consortium.

§ 1000.435 When and how will the Assistant Secretary respond to an appeal by a Tribe/Consortium?

The appropriate Assistant Secretary will decide an appeal of any initial decision made by a bureau head (see §1000.433). If the Tribe/Consortium has appealed the bureau's initial adverse decision of the bureau to the bureau head and the bureau head's decision on initial appeal is contrary to the Tribe's/Consortium's request for relief, or the bureau head fails to make a decision within 30 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation, the Tribe's/Consortium's appeal will be sent automatically to the appropriate Assistant Secretary for decision. The Assistant Secretary must either concur with the bureau head's decision or issue a separate decision within 60 days of receipt by the bureau of the Tribe's/Consortium's initial request for review and any accompanying statement and documentation. The decision of the Assistant Secretary is final for the Department.

§ 1000.436 How may a Tribe/Consortium seek reconsideration of the Secretary's decision involving a self-governance compact?

A Tribe/Consortium may request reconsideration of the Secretary's decision involving a self-governance compact by sending a written request for

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reconsideration to the Secretary within 30 days of receipt of the decision. A copy of this request must also be sent to the Director of the Office of Self-Governance.

§ 1000.437 When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?

The Secretary must respond in writing to the Tribe/Consortium within 30 days of receipt of the Tribe's/Consortium's request for reconsideration.

§ 1000.438 May Tribes/Consortia appeal Department decisions to a Federal court?

Yes, Tribes/Consortia may appeal decisions of Department officials relating to the self-governance program to an appropriate Federal court, as authorized by section 110 of Pub. L. 93-638 (25 U.S.C. 405m-1), or any other applicable law.

Subpart S—Conflicts of Interest

§ 1000.460 What is an organizational conflict of interest?

(a) An organizational conflict of interest arises when there is a direct conflict between the financial interests of the self-governance Tribe/Consortium and:

- (1) The financial interests of beneficial owners of Indian trust resources;
- (2) The financial interests of the United States relating to trust resources, trust acquisitions, or lands conveyed or to be conveyed under the Alaska Native Claims Settlement Act 43 U.S. C. 1601 *et seq.*; or
- (3) An express statutory obligation of the United States to third parties. This section only applies if the conflict was not addressed when the AFA was first negotiated.

(b) This section only applies where the financial interests of the Tribe/Consortium are significant enough to impair the Tribe's/Consortium's objectivity in carrying out the AFA, or a portion of the AFA.