

§ 1000.196 What must be included in a finding by BIA or in a claim by an affected Tribe/Consortium or Tribal organization regarding the issue of a limitation or reduction of services?

An affected Tribe/Consortium must include in its claim a written explanation identifying the alleged limitation or reduction of services, contracts, or funding for which it is eligible. A finding by BIA must likewise identify the limitation or reduction.

§ 1000.197 How will BIA resolve a claim?

All findings and claims timely made in accordance with §§1000.194 through 1000.195 will be resolved in accordance with 25 CFR part 2.

§ 1000.198 How must a limitation or reduction in services, contracts, or funds be remedied?

(a) If funding a participating Tribe/Consortium will limit or reduce services, contracts, or funds for which another Tribe/Consortium or Tribal organization is eligible, BIA must remedy the reduction as follows:

(1) In the current AFA year BIA must use shortfall funding, supplemental funding, or other available BIA resources; and

(2) In a subsequent AFA year, BIA may adjust the AFA funding in an AFA to correct a finding of actual reduction in services, contracts, or funds for that subsequent year.

(b) All adjustments under this section must be mutually agreed between BIA and the participating Tribe/Consortium.

Subpart I—Public Consultation Process

§ 1000.210 When does a non-BIA bureau use a public consultation process related to the negotiation of an AFA?

When required by law or when appropriate under bureau discretion, a bureau may use a public consultation process in negotiating an AFA.

§ 1000.211 Will the bureau contact the Tribe/Consortium before initiating public consultation process for a non-BIA AFA under negotiation?

Yes, the bureau and the Tribe/Consortium will discuss the consultation process to be used in negotiating a non-BIA AFA.

(a) When public consultation is required by law, the bureau will follow the required process and will involve the Tribe/Consortium in that process to the maximum extent possible.

(b) When public consultation is a matter of bureau discretion, at Tribal request the Tribe/Consortium and the bureau, unless prohibited by law, will jointly develop guidelines for that process, including the conduct of any future public meetings. The bureau and the Tribe/Consortium will jointly identify a list of potential project beneficiaries, third-party stakeholders, or third-party users (affected parties) for use in the public consultation process.

§ 1000.212 What is the role of the Tribe/Consortium when a bureau initiates a public meeting?

When a bureau initiates a public meeting with affected parties it will take the following actions:

(a) The bureau will notify the Tribe/Consortium of the meeting time, place, and invited parties:

(1) Ten days in advance, if possible; or

(2) If less than 10 days in advance, at the earliest practical time.

(b) When the bureau notifies the Tribe/Consortium, the bureau will invite the Tribe/Consortium to participate in and, unless prohibited by law, to co-sponsor or co-facilitate the meeting.

(c) When possible, the bureau and the Tribe/Consortium should meet to plan and discuss the conduct of the meeting, meeting protocols, and general participation in the proposed consultation meeting.

(d) The bureau and the Tribe/Consortium will conduct the meeting in a manner that facilitates and does not undermine the government-to-government relationship and self-governance;

(e) The Tribe/Consortium may provide technical support to the bureau to

enhance the consultation process, as mutually agreed.

§ 1000.213 What should the bureau do if it is invited to attend a meeting with respect to the Tribe's/Consortium's proposed AFA?

If the bureau is invited to participate in meetings, hearings, etc., held or conducted by other parties, where the subject matter of the AFA under negotiation is expected to be raised, the bureau:

- (a) Shall notify the Tribe/Consortium at the earliest practical time; and
- (b) Should encourage the meeting sponsor to invite the Tribe/Consortium to participate.

§ 1000.214 Will the bureau and the Tribe/Consortium share information concerning inquiries about the Tribes/Consortia and the AFA?

Yes, the bureau and the Tribe/Consortium will exchange information about inquiries from affected or interested parties relating to the AFA under negotiation.

Subpart J—Waiver of Regulations

§ 1000.220 What regulations apply to self-governance Tribes?

All regulations that govern the operation of programs included in an AFA apply unless waived under this subpart. To the maximum extent practical, the parties should identify these regulations in the AFA.

§ 1000.221 Can the Secretary grant a waiver of regulations to a Tribe/Consortium?

Yes, a Tribe/Consortium may ask the Secretary to grant a waiver of some or all Department of the Interior regulation(s) applicable to a program, in whole or in part, operated by a Tribe/Consortium under an AFA.

§ 1000.222 How does a Tribe/Consortium obtain a waiver?

To obtain a waiver, the Tribe/Consortium must:

- (a) Submit a written request from the designated Tribal official to the Director for BIA programs or the appropriate bureau/office director for non-BIA programs;

- (b) Identify the regulation to be waived and the reasons for the request;
- (c) Identify the programs to which the waiver would apply;
- (d) Identify what provisions, if any, would be substituted in the AFA for the regulation to be waived; and
- (e) When applicable, identify the effect of the waiver on any trust programs or resources.

§ 1000.223 When can a Tribe/Consortium request a waiver of a regulation?

A Tribe/Consortium may request a waiver of a regulation:

- (a) As part of the negotiation process; or
- (b) After an AFA has been executed.

§ 1000.224 How can a Tribe/Consortium expedite the review of a regulation waiver request?

A Tribe/Consortium may request a meeting or other informal discussion with the appropriate bureau officials before submitting a waiver request.

- (a) To set up a meeting, the Tribe/Consortium should contact:
 - (1) For BIA programs, the Director, OSG; or
 - (2) For non-BIA programs, the designated representative of the bureau.
- (b) The meeting or discussion is intended to provide:
 - (1) A clear understanding of the nature of the request;
 - (2) Necessary background and information; and
 - (3) An opportunity for the bureau to offer appropriate technical assistance.

§ 1000.225 Are meetings or discussions mandatory?

No, a meeting with the bureau officials is not necessary to submit a waiver request.

§ 1000.226 On what basis may the Secretary deny a waiver request?

The Secretary may deny a waiver request if:

- (a) For a Title-I-eligible program, the requested waiver is prohibited by Federal law; or
- (b) For a non-Title-I-eligible program, the requested waiver is:
 - (1) Prohibited by Federal law; or
 - (2) Inconsistent with the express provisions of the AFA.