

§ 1000.270

(a) Determining or approving appropriate construction standards to be used in AFAs;

(b) Verifying that there is an adequate Tribal inspection system utilizing licensed professionals;

(c) Providing for sufficient monitoring of design and construction by the Secretary; and

(d) Requiring corrective action during performance when appropriate.

Subpart L—Federal Tort Claims

§ 1000.270 What does this subpart cover?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This section covers:

(a) Coverage of claims arising out of the performance of functions under Self-Governance AFA's; and

(b) Procedures for filing claims under FTCA.

§ 1000.271 What other statutes and regulations apply to FTCA coverage?

A number of other statutes and regulations apply to FTCA coverage, including the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671-2680) and related Department of Justice regulations in 28 CFR part 14.

§ 1000.272 Do Tribes/Consortia need to be aware of areas which FTCA does not cover?

Yes, there are claims against Self-Governance Tribes/Consortia which are not covered by FTCA, claims which may not be pursued under FTCA, and remedies that are excluded by FTCA. The following general guidance is not intended as a definitive description of coverage, which is subject to review by the Department of Justice and the courts on a case-by-case basis.

(a) What claims are expressly barred by FTCA and therefore may not be made against the United States, a Tribe or Consortium? Any claim under 28 U.S.C. 2680, including claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

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(b) What claims may not be pursued under FTCA?

(1) Claims against subcontractors arising out of the performance of subcontracts with a Self-Governance Tribe/Consortium;

(2) Claims for on-the-job injuries which are covered by workmen's compensation;

(3) Claims for breach of contract rather than tort claims; or

(4) Claims resulting from activities performed by an employee which are outside the scope of employment.

(c) What remedies are expressly excluded by FTCA and therefore are barred?

(1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674; and

(2) Other remedies not permitted under applicable state law.

§ 1000.273 Is there a deadline for filing FTCA claims?

Yes, claims shall be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 1000.274 How long does the Federal government have to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?

The Federal government has 6 months to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed.

§ 1000.275 Is it necessary for a self-governance AFA to include any clauses about FTCA coverage?

No, clauses about FTCA coverage are optional. At the request of Tribes/Consortia, self-governance AFA's shall include the following clause to clarify the scope of FTCA coverage:

For purposes of Federal Tort Claims Act coverage, the Tribe/Consortium and its employees (including individuals performing personal services contracts with the tribe/consortium) are deemed to be employees of the Federal government while performing work under this AFA. This status is not changed by the source of the funds used by the Tribe/Consortium to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Tribe/Consortium.