§ 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.

§ 1000.227 What happens if the Secretary denies the waiver request?

If the Secretary denies a waiver request, the Secretary issues a written decision stating:
(a) The basis for the decision;
(b) The decision is final for the Department; and
(c) The Tribe/Consortium may request reconsideration of the denial.

§ 1000.228 What are examples of waivers prohibited by law?

Examples of when a waiver is prohibited by Federal law include:
(a) When the effect would be to waive or eliminate express statutory requirements;
(b) When a statute authorizes civil and criminal penalties;
(c) When it would result in a failure to ensure that proper health and safety standards are included in an AFA (section 403(e)(2));
(d) When it would result in a reduction of the level of trust services that would have been provided by the Secretary to individual Indians (section 403(g)(4));
(e) When it would limit or reduce the services, contracts, or funds to any other Indian Tribe or Tribal organization (section 406(a));
(f) When it would diminish the Federal trust responsibility to Tribes, individual Indians or Indians with trust allotments (Section 406(b)); or
(g) When it would violate Federal case law.

§ 1000.229 May a Tribe/Consortium propose a substitute for a regulation it wishes to be waived?

Yes, where a Tribe/Consortium wishes to replace the waived regulation