

(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”.

[65 FR 78703, Dec. 15, 2000, as amended at 75 FR 31701, June 4, 2010]

**§ 1000.430 Who handles appeals regarding reassumption for imminent jeopardy?**

Appeals regarding reassumption of Title I-eligible PFSAs are handled by the IBIA under the procedures in 25 CFR 900.171 through 900.176. Appeals regarding reassumption of PFSAs that are not Title I-eligible are handled by the CBCA under the procedures in 48 CFR part 6101.

[75 FR 31702, June 4, 2010]

**§ 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 under 48 CFR 6101.30, 6101.31 (CBCA) and 43 CFR 4.602, 4.604 through 4.628 (DOI) and under the Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412.

[75 FR 31702, June 4, 2010]

**§ 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 PFSA pre-award disputes.* For Title I-eligible PFSA 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 sub-

part), 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.

(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.