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If you are * * *	Then the costs that you must repay are * * *	And then the costs that you do not need to repay are * * *
(1) Agriculture intern	Living allowance, tuition, books, and fees received while occupying position plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization
(2) Cooperative education	Tuition, books, and fees plus interest	
(3) Scholarship	Costs of scholarship plus interest	
(4) Post graduation recruitment	All student loans assumed by us under the program plus interest.	
(5) Postgraduate studies	Living allowance, tuition, books, and fees received while in the program plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization.

(b) For agriculture education programs with an obligated service requirement, we will adjust the amount required for repayment by crediting toward the final amount of debt any obligated service performed before breach of contract.

Dated: June 22, 2000.

Kevin Gover,

Assistant Secretary-Indian Affairs.

[FR Doc. 00–17195 Filed 7–13–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

25 CFR Part 84

RIN 1076–AE03

Encumbrances of Tribal Land—Contract Approvals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are issuing a proposed rule stating which types of contracts or agreements encumbering tribal land are not subject to approval by the Secretary of the Interior under the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179. The proposed rule also provides, in accordance with the Act, that Secretarial approval is not required (and will not be granted) for any contract or agreement that the Secretary determines is not covered by the Act. Finally, for contracts and agreements that are covered by the Act, the proposed rule sets out mandatory conditions for the Secretary's approval.

DATES: You must submit any written comments no later than October 12, 2000.

ADDRESSES: Comments (2 copies) should be addressed to: U.S. Forest Service (CAET), 200 E. Broadway, Missoula, MT 59807 Attn: Trust Rule.

FOR FURTHER INFORMATION CONTACT: Art Gary, Bureau of Indian Affairs, Trust Policies and Procedures Project, 202–208–6422.

SUPPLEMENTARY INFORMATION:

I. Background

In 1871, Congress enacted Section 2103 of the Revised Statutes, codified at 25 U.S.C. 81 (Section 81). It placed several restrictions, including a requirement for approval by the Secretary of the Interior, on contracts between any person and any Indian tribe or individual Indians for

> the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States.

Section 81 reflected Congressional concern that Indian tribes and individual Indians were incapable of protecting themselves from fraud in their financial affairs. To that end, it also required that the Secretary approve any contracts for legal services between an Indian tribe and an attorney, and provided that any person could bring an action in the name of the United States to enforce the Section's requirements (the "qui tam" provision).

Over the years, administration of this statute became difficult. Although it was interpreted early on not to apply to leases of Indian land (see *Lease of Indian Lands for Grazing Purposes,* 18 Op. Atty. Gen. 235 (1885)), parties opposed to such leases still asked courts to invalidate them based on alleged non-compliance with Section 81. See, *e.g., United States ex rel. Harlon* v. *Bacon,* 21 F.3d 209 (8th Cir. 1994) (a suit under the qui tam provision). As time went on, there was confusion over exactly what contracts Section 81 did or did not cover. The Bureau of Indian Affairs (BIA) began to issue "accommodation approvals" for contracts that did not require the Secretary's approval, but where the relevant Indian tribe requested that they be approved anyway to avoid casting any doubt upon the tribe's authority to enter into the contract. To accommodate the tribe's request, the BIA would "approve" the contract, even though such "approval" was not required under Section 81.

In addition to administrative problems, Section 81 became outdated. It was a relic of a paternalistic policy towards Indian tribes prevalent at the end of the nineteenth century. As noted by the Senate Committee on Indian Affairs in its report on Pub. L. 106–179 (the Senate Report), "Indian tribes, their corporate partners, courts, and the BIA have struggled for decades with how to apply Section 81 in an era that emphasizes tribal self-determination, autonomy, and reservation economic development." Congress attempted to address some of these concerns through enactment of later statutes such as the Indian Reorganization Act (IRA) of 1934, 48 Stat. 984; the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93–638; and the Indian Mineral Development Act of 1982, Pub. L. 97–382. Since, however, Congress did not change the provisions of Section 81 (except for a minor amendment in 1958), the uncertainty in its application continued.

To address this uncertainty, Congress enacted the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (the Act), Pub. L. 106–179, in March 2000. Section 2 of the Act replaces the text of Section 81 with six subsections. Subsection (a) supplies definitions, which are incorporated into the proposed regulations. Subsection (b) provides that agreements or contracts with Indian tribes that encumber Indian lands for a period of seven or more years are not valid unless they bear the approval of the Secretary of the Interior or a designee of the Secretary. By making this change, Section 81 no longer applies to a broad range of commercial transactions. Instead, as noted in the Senate Report, Section 81 will apply only to those transactions where the contract between the tribe and a third

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party could allow that party to exercise exclusive or nearly exclusive proprietary control over the Indian lands. The intent is to protect the tribe from loss of proprietary control of its lands and to provide the measure of certainty in the application of Section 81 that was lacking in the prior law.

Subsection (c) provides that a determination by the Secretary that an agreement is not covered by Section 81 has the effect of making the section inapplicable. The Senate Report notes that "it would contradict the law's intent if parties made a practice of submitting agreements where Section 81 is patently inapplicable, simply to obtain an official endorsement of this conclusion." Thus, with the removal of the uncertainty regarding the validity of such agreements, the BIA will no longer issue "accommodation approvals." Also, and most importantly for purposes of this proposed rule, this subsection is meant to work in conjunction with subsection (e) that requires that the Secretary enact regulations within 180 days from the law's enactment establishing which types of agreements are not covered by Section 81.

Subsection (d) requires the Secretary to disapprove any agreement otherwise covered by the law, if it is in violation of federal law. The Secretary must disapprove, also, if the contract or agreement fails to address sovereign immunity in one or more of the three ways specified, specifically a provision that: provides remedies to address a breach of the agreement; provides a reference to applicable law (found in tribal code, ordinance, or competent court ruling) that discloses the tribe's right to assert immunity; or waives immunity in some manner. As noted in the Senate Report, "consistent with the principles of tribal self-determination, this bill does not direct the BIA to substitute its business judgment over that of a tribal government." These are, therefore, the only criteria in the Act for approval or disapproval of contracts or agreements that are subject to the Act.

Subsection (f) removes the statutory requirement that attorney contracts must be approved by the Secretary. It also makes clear that the Act is not intended to make any changes to provisions of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, which require federal approval. Finally, consistent with the long-standing principle that the federal trust obligation may not be unilaterally terminated, the Act does not alter those tribal constitutions that require federal approvals for specific tribal actions, such as attorney contracts. Thus, the Secretary must still approve or disapprove attorney contracts if a tribal constitution so requires. The criteria, if any, for approval of such contracts will be those in the tribal constitution.

Those tribes with corporate charters under Section 17 of the IRA, 25 U.S.C. 477 are exempt from the requirements of the Act.

II. Section-by-Section Analysis of the Proposed Rule

Section 84.001 states the purpose of the proposed rule as being the implementation of the Indian Economic Development and Contract Encouragement Act of 2000, Pub. L. 106–179.

Section 84.002 contains terms necessary for understanding the proposed rule. The term "encumber," which Congress did not define in the Act, refers, consistent with the Senate Report, to the possibility that a third party could gain exclusive or nearly exclusive proprietary control over tribal land. We have defined "Indian tribe" as it is defined in the Act. The definition of "tribal lands" in the proposed rule is the same as the definition of "Indian lands" in the Act. We have used "tribal lands" to make it clear that the provisions of the Act and this proposed rule do not apply to individually owned lands.

Section 84.003 indicates that, unless otherwise exempted, those contracts and agreements that encumber tribal lands for a period of seven or more years require Secretarial approval under this proposed rule. The Senate Report uses the following examples:

> For example, a lender may finance a transaction on an Indian reservation and receive an interest in tribal lands as part of that transaction, If, for example, one of the remedies for default would allow this interest to ripen into authority to operate the facility, this would constitute an adequate encumbrance to bring the contract within Section 81. By contrast, if the transaction concerned "limited recourse financing" and the lender merely acquired the first right to all of the revenue derived from specified lands for a period of years, this would not constitute a sufficient encumbrance to bring the transaction within Section 81.

Section 84.004 indicates that the following types of contracts or agreements are not subject to this proposed rule:

- Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. Congress did not repeal any other requirement for Secretarial approval of encumbrances, nor did it state that the Act imposed an additional approval process. This exemption is also consistent with previous opinions of both the Department of the Interior and the Department of Justice, judicial decisions, and legislative history of the Indian Mineral Development Act, all of which consistently state that the requirements of Section 81 do not apply to leases, rights-of-way, and other documents that convey a present interest in tribal land. Note, however, that contracts and agreements that are similar to those approved under other federal law or regulation, but are not subject to that approval, such as a contract between a tribe and another party to enter into a lease, may be subject to approval under this Part.
- Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415. Currently, this exemption only applies to certain leases by the Tulalip tribes.
- Subleases and assignments of leases of tribal land that do not require approval by the Secretary under part 162 of this title. We have waived approval of these instruments either in a master lease approved by us or by regulation.
- Contracts or agreements that convey any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members. Such assignments are internal tribal matters. We would approve any further encumbrances of the assigned tribal land under this part or another relevant regulation (*e.g.,* 25 CFR part 162).

Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more. By definition, such contracts or agreements do not encumber the land under the Act. Such contracts or agreements may include contracts for personal services; construction contracts; contracts for services performed for tribes on tribal lands; and bonds, loans, security interests in personal property, or other financial arrangements that do not and could not involve interests in land.

- Contracts that are entered into by tribal corporations chartered under 25 U.S.C. 477. As noted above, the Act specifically does not apply to such tribes.
- Tribal attorney contracts. However, as noted above, although the Act repealed the federal statutory requirements for approval of attorney contracts, the BIA must still do so if required under a tribal constitution.
- Attorney and other professional contracts by Indian tribal governments identified as Self-Governance Tribes under 25 U.S.C. 450, as amended. This is to conform to the exemption of these contracts from approval by the Secretary under 25 U.S.C. 458cc(h)(2).

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• Contracts or agreements that are subject to approval by the National Indian Gaming Commission. The Act specifically exempts these contracts and agreements from its provisions, and the National Indian Gaming Commission will continue to review and approve contracts that provide for management of a tribal gaming activity.

• Contracts or agreements under the Federal Power Act (FPA) relating to the use of tribal lands that meet the definition of a ''reservation'' under the FPA, with certain conditions. The provisions of the FPA cited in the conditions already provide for review of such contracts or agreements by the Secretary.

Section 84.005 makes it clear that the Secretary will return to the submitting tribes those contracts and agreements that do not require his approval. Therefore, we will no longer issue ''accommodation approvals.''

Section 84.006 establishes the criteria for disapproval of a contract or agreement under this proposed rule. Specifically, the Secretary must disapprove those contracts or agreements that would violate federal law or those that do not contain provision(s) regarding the exercise of tribal sovereign immunity. As noted above, consistent with the legislative history of the Act, these are the only criteria for Secretarial review under this proposed rule.

Section 84.007 states, consistent with Section 2(b) of the Act, that the effect of disapproval of a contract or agreement under this part (as opposed to return of a contract or agreement under § 84.005 of this proposed rule) is that the contract or agreement is invalid.

III. Public Comments

The addition of a new part 84 to 25 CFR is necessitated by the enactment of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179. The Department is responding to the statutory requirement that regulations to implement the law be developed within 180 days of the enactment of Pub. L. 106–179. The public is invited to make substantive comments on the Department's proposed promulgation of this new part. Two copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments will be available for public inspection at the Department of the Interior, Office of the Secretary, MS 7214 MIB, Washington, DC 20240. Comments may also be telefaxed to the following number: 406/329–3021. Email comments will be accepted at: mailroom__wo__caet@fs.fed.us All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of a final rule.

Our practice is to make comments, including the names and addresses of persons commenting, available for public review during regular business hours. Persons commenting as private individuals may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a commenter's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. Comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a ''significant regulatory action'' from an economic or policy standpoint. This proposed rule is pursuant to a statutory mandate and is consistent with the Department's policy of encouraging tribal self-determination and economic development. The proposed rule reduces the number of contracts the Department has to review each year. Prior to the amendments enacted under Pub. L. 106–179, tribes had to submit certain contracts for approval by the Secretary of the Interior for which Secretarial approval has now (through enactment of Pub. L. 106–179) been deemed unnecessary. Those tribes having contracts or agreements covered under the new law, however, must include a statement regarding their sovereign immunity. This is an intergovernmental mandate; however, it would not affect the rights of either party under such contracts and agreements, but would only require that these rights be explicitly stated. The cost burden on the tribes for including this provision would be minimal. Otherwise, the proposed rule has no direct or indirect impact on any other agency, does not materially alter the budgetary impact of financial programs, or raise novel legal or policy issues.

B. Review Under Executive Order 12988

With respect to the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

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C. Review Under the Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this proposed rule because it applies only to tribal governments, not State and local governments.

D. Review Under the Small Business Regulatory Enforcement Act of 1996 (SBREFA)

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of $100 million or more. This proposed rule will not result in a major increase in costs or prices. In fact, it is estimated that the Department will save time and resources through the proposed rule because the number of contracts submitted for Secretarial approval will be reduced. Therefore, no increases in costs for administration will be realized and no prices would be impacted through the streamlining of the contract approval process within the Department and the BIA. The effect of the proposed rule is to encourage and foster tribal contracting and, consequently, strengthen tribal self-determination and economic development. This proposed rule will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the proposed rule will be realized by tribal governments in the economy of administration accorded contract negotiation between tribes and third parties. Unless the contracts contemplate an encumbrance of Indian lands or could otherwise lead to the loss of tribal proprietary control over such lands, the Department would not require such contracts and agreements to be submitted to the BIA for approval. The Department anticipates, therefore, that the impacts to small business or enterprises and the tribes themselves will be positive and, indeed, allow for greater flexibility in contracting for certain services on Indian lands.

E. Review Under the Paperwork Reduction Act

No information or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Review Under Executive Order 13132 Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Review Under the National Environmental Policy Act of 1969

This proposed rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the Federal actions under this proposed rule (*i.e.,* approval or disapproval of contracts or agreements that could encumber Tribal lands for a period of seven years or more) will be subject at the time of the action itself to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This proposed rule will not result in the expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Department does take notice, however, that the proposed rule (in response to Pub. L. 106–179) requires that a tribe entering into a covered contract include a specific statement regarding its sovereign immunity. This is an additional enforceable duty imposed on the tribes, and so would constitute an intergovernmental mandate under the Unfunded Mandates Reform Act. However, the cost of this mandate would be minimal.

I. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 14, 1998, "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655) and 512 DM 2, we have evaluated any potential effects upon Federally recognized Indian tribes and have determined that there are no potential adverse effects. No action is taken under this proposed rule unless a tribe voluntarily enters into a contract or agreement that could encumber tribal land for seven years or more. Tribes will be asked for comments prior to publication as a final regulation of this proposed rule and their comments will be considered prior to publication.

List of Subjects in 25 CFR Part 84

Administrative practice and procedure, Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR chapter I by adding part 84 to read as follows:

PART 84—ENCUMBRANCES OF TRIBAL LAND

Sec.

84.001 What is the purpose of this part?
84.002 What terms must I know?
84.003 What types of contracts and agreements require Secretarial approval under this part?
84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?
84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?
84.006 When will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?
84.007 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

Authority: 25 U.S.C. 81, Pub. L. 106–179.

§ 84.001 What is the purpose of this part?

The purpose of this part is to implement the provisions of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179, which amends Section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

§ 84.002 What terms must I know?

The Act means the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106–179, which amends Section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

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Encumber means to attach a claim, lien, charge, right of entry or liability to real property (referred to generally as encumbrances). Encumbrances covered by this part may include leasehold mortgages, easements, and other contracts or agreements that could give to a third party exclusive or nearly exclusive proprietary control over tribal land.

Indian tribe means any Indian tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act, which is federally-recognized by the United States government for special programs and services provided by the Secretary to Indians because of their status as Indians.

Secretary means the Secretary of the Interior or his or her designated representative.

Tribal lands means those lands held by the United States in trust for a tribe or those lands owned by a tribe subject to federal restrictions against alienation, as referred to in Public Law 106–179 as "Indian lands."

§ 84.003 What types of contracts and agreements require Secretarial approval under this part?

Unless otherwise provided in this part, contracts and agreements entered into by an Indian tribe that encumber tribal lands for a period of seven or more years require Secretarial approval under this part.

§ 84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?

Yes. The following types of contracts or agreements do not require Secretarial approval:

(a) Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. See, for example, 25 CFR parts 152, 162, 163, 166, 169, 200, 211, 216, and 255;

(b) Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415;

(c) Subleases and assignments of leases of tribal land that do not require approval by the Secretary under part 162 of this chapter;

(d) Contracts or agreements that convey any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members.

(e) Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more;

(f) Contracts or agreements that are entered into by tribal corporations chartered under 25 U.S.C. 477;

(g) Tribal attorney contracts;

(h) Attorney and other professional contracts by Indian tribal governments identified as Self-Governance Tribes under 25 U.S.C. 450, as amended, for the period that a Self-Governance agreement is in effect;

(i) Contracts or agreements that are subject to approval by the National Indian Gaming Commission under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*, and the Commission's regulations; or

(j) Contracts or agreements relating to the use of tribal lands that meet the definition of a "reservation" under the Federal Power Act (FPA), provided that:

(1) the Federal Energy Regulatory Commission (FERC) has issued a license or an exemption;

(2) FERC has made the finding under Section 4(e) of the FPA (16 U.S.C. 797(e)) that the license or exemption will not interfere or be inconsistent with the purpose for which such reservation was created or acquired; and

(3) the FERC license or exemption includes the Secretary's conditions for protection and utilization of the reservation under Section 4(e) and payment of annual use charges to the tribe under Section 10(e) of the FPA (16 U.S.C. 803(e)).

§ 84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?

No. The Secretary will not approve contracts or agreements that do not encumber tribal lands for a period of seven or more years. The Secretary will return such contracts and agreements with a statement explaining why Secretarial approval is not required. The provisions of the Act will not apply to those contracts or agreements the Secretary determines are not covered by the Act.

§ 84.006 When will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?

The Secretary will disapprove a contract or agreement that requires Secretarial approval under this part if the Secretary determines that such contract or agreement:

(a) Violates federal law; or

(b) Does not contain at least one of the following:

(1) A provision that provides for remedies in the event the contract or agreement is breached;

(2) A provision that references a tribal code, ordinance or ruling of a court of competent jurisdiction that discloses the right of the tribe to assert sovereign immunity as a defense in an action brought against the tribe; or

(3) A provision that includes an express waiver of the right of the tribe to assert sovereign immunity as a defense in any action brought against the tribe, including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action.

§ 84.007 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

If the Secretary disapproves a contract or agreement that requires Secretarial approval under this part, the contract or agreement is invalid as a matter of law.

Dated: July 5, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

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