

§ 84.005

§ 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. Within thirty days after receipt of final, executed documents, 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 Under what circumstances will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?

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

- (1) Violates federal law; or
- (2) Does not contain at least one of the following provisions that:
 - (i) Provides for remedies in the event the contract or agreement is breached;
 - (ii) 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
 - (iii) 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.
- (b) The Secretary will consult with the Indian tribe as soon as practicable before disapproving a contract or agreement regarding the elements of the contract or agreement that may lead to disapproval.

§ 84.007 What is the status of a contract or agreement that requires Secretarial approval under this part but has not yet been approved?

A contract or agreement that requires Secretarial approval under this

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part is not valid until the Secretary approves it.

§ 84.008 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.

PART 87—USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

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AUTHORITY: 5 U.S.C. 301; 87 Stat. 466, 467, 468.

SOURCE: 39 FR 1835, Jan. 15, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 87.1 Definitions.

As used in this part 87, terms shall have the meanings set forth in this section.

- (a) *Act* means the Act of October 19, 1973 (Pub. L. 93-134; 87 Stat. 466, 467, 468).
- (b) *Secretary* means the Secretary of the Interior or his authorized representative.
- (c) *Commissioner* means the Commissioner of Indian Affairs or his authorized representative.
- (d) *Area Director* means the Area Director or his equivalent of any one of the Area Offices of the Bureau of Indian Affairs or his authorized representative.