

JUN 07 1989

MEMORANDUM FOR: Ronald M. Scroggins
Controller

THRU: Graham D. Johnson, Director
Division of Accounting and Finance, OC

FROM: C. James Holloway, Jr., Chief
License Fee Management Branch, OC

SUBJECT: FEE EXEMPTION-SPOKANE TRIBAL MINING AND MINERALS
DEPARTMENT INC.

We recently received an application dated April 4, 1989 for a source material license from the Spokane Indian Tribe to possess uranium ore at the Sherwood Uranium Facility, Wellpinit, WA.

In the past, applications filed by Indian tribes have been exempted from paying fees under 10 CFR 170. The guidance we have been following is based on a memorandum dated November 17, 1987, from the Office of General Counsel (OGC) (Enclosure 1). Since Indian tribes do not fall within the strict definition of a Federal Agency as defined in 10 CFR 170.3(b), nor are they considered a State agency, the fee exemption provisions of 170.11(a)(5) or 170.11(a)(9) do not apply to the application filed by the Spokane Tribe. OGC has indicated, however, that since Indian tribes are organized as governmental entities similar to State governments, consideration should be given to granting Indian tribes and their governmental organizations the same exemptions granted by the NRC to States and Government Agencies. Because Indian tribes are organized as Governmental entities similar to State governments, we recommend in accordance with 10 CFR 170.11(b)(1) that you grant an exemption from fees to the Spokane Tribe of Indians having determined that such exemption is authorized by law and is otherwise in the public interest.

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In the proposed revision of 10 CFR 170, which will be sent to the Commission by the end of June 1989, a new exemption provision has been added (170.11(a)(11)) for those Indian Tribes federally recognized as eligible for services provided by the Secretary of the Interior. The Spokane Indian Tribe has been so recognized by the Secretary of the Interior (Enclosure 2).

C. James Holloway, Jr., Chief
License Fee Management Branch
Division of Accounting and Finance
Office of the Controller

APPROVED:

Original signed by
Ronald M. Scroggins

DATE: JUN 13 1989

Ronald M. Scroggins, Controller

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ROUTING AND TRANSMITTAL SLIP

Date 5/25/89

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Bob Jenner		
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Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

Attached are 2 definitions for Indian Tribes. We got No 1 from Law Library & used it in the proposed rule. We then rec'd No. 2 from G.P.A. Which should we use?

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
	Phone No.

Glenda Jackson for
Jim Hollway

5041-105

U.S.GPO: 1986-O-481-274/20022

OPTIONAL FORM 41 (Rev. 7-78)
 Prescribed by GSA
 FPMR (41 CFR) 101-11.208

- Sec.
1919. Agreements between States and Indian tribes.
(A) Subject coverage
(B) Reversions; notice; actions or proceedings unaffected.
1920. Improper removal of child from custody; declination as jurisdiction; forthwith return of child; donor exception.
1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child.
1922. Emergency removal or placement of child; termination; appropriate action.
1923. Effective date.

SUBCHAPTER II—INDIAN CHILD AND FAMILY PROGRAMS

1921. Grants for on or near reservation programs and child welfare codes.
(a) Statement of purpose; scope of programs.
(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; conditions for such programs; unfunded State licensing or approval for qualification for assistance under federally assisted program.
1922. Grants for off-reservation programs for educational services.
1923. Funds for on and off reservation programs.
(a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments.
(b) Appropriation authorization under section 13 of this title.
1924. "Indian" defined for certain purposes.

SUBCHAPTER III—RESOURCEKEEPING, INFORMATION AVAILABILITY, AND TRUSTARIES

1921. Information availability to and disclosure by Secretary.
(a) Copy of final decree or order; other information; anonymity; adverse comment from Division of Information Act.
(b) Disclosure of information for enrollment of Indian child in tribe or for determination of membership rights or benefits; certification of enrollment to enrollment.
1922. Rules and regulations.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

1921. Locally convenient day schools.
(a) Name of Secretary.
(b) Report to Congress; contents, etc.
1922. Codes to States.
1923. Severability of provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1727 of this title.

§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

- (1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power . . . To regulate Commerce . . . with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Pub. L. 95-602, § 2, Nov. 8, 1978, 92 Stat. 3039.)

SHORT TITLE

Section 1 of Pub. L. 95-602 provided: "That this Act (enacting this chapter) may be cited as the 'Indian Child Welfare Act of 1978'."

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Pub. L. 95-602, § 3, Nov. 8, 1978, 92 Stat. 3039.)

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an

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Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1005 of title 42;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1002(c) of title 42;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or indi-

vidual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(Pub. L. 95-602, § 4, Nov. 8, 1978, 92 Stat. 3000.)

Section 1911. Indian tribe jurisdiction over Indian child custody proceedings

This section is referred to in section 1977 of this title.

SUBCHAPTER I-CHILD CUSTODY PROCEEDINGS

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; destination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to destination by the tribal court of such tribe.

(c) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

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Title I is known as the Indian Self-Determination Act. Contracts under the Act include "tribal governmental functions" as defined in § 271.2(g), "business related functions" as defined in § 271.2(d), and certain contractable trust resources programs or parts of programs as set forth in § 271.32. The nature of contracts with Indian entities which do not fall within the purview of the Act, including contracts which may provide for profit, and the conditions for entering into such contracts, are set forth in the regulations implementing the Act of June 25, 1910 (36 Stat. 861, 25 U.S.C. 47), commonly referred to as the "Buy Indian" Act.

(b) Section 104 of Title I of the Act provides authority for making grants for certain purposes. It is the Bureau's policy to make grants for the purpose specified in section 104 of the Act in lieu of contracts. Part 272 of this chapter gives the procedures and requirements for obtaining grants under section 104 of the Act.

(c) Nothing in these regulations shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(2) Authorizing or requiring the termination of any trust responsibility of the United States with respect to the Indian People; or

(3) Permitting significant reduction in services to Indian people as a result of this part.

(d) Nothing in these regulations shall be construed to mandate a tribe to apply for a contract or contracts with the Bureau to plan, conduct, and administer all or parts of any Bureau program. Such applications under these regulations are strictly voluntary.

§ 271.2 Definitions.

As used in this part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203).

(b) "Area Director" means the official in charge of a Bureau of Indian Affairs area office except that:

(1) The term means the Director, Office of Tribal Resources Development, for matters regarding contract-

ing for all or part of the Indian action team program whenever a tribal organization elects to submit such a contract application through the Indian Technical Assistance Center and the tribal governing body(s) has authorized such application in its resolution pursuant to § 271.15(b).

(2) The term means the Director, Office of Administration, for matters regarding contracting for all or part of the construction, building and utilities programs which is contractable under this part and which is within the responsibility of the Division of Facilities Engineering.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Business related function" means all programs authorized to be administered by the Bureau for the benefit of Indians enumerated as line items in the Bureau's annual budget request under Tribal Resources Development as the Subactivities of Business Enterprise Development, Credit and Indian Action Teams; Revolving Funds for Loans; Indian Loan Guaranty and Insurance Funds; and also programs or parts of programs connected with construction projects but exclusive of the actual construction of the project.

(e) "Commissioner" means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, is responsible for the direction of day-to-day operations of the Bureau of Indian Affairs.

(f) "Days" means calendar days.

(g) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(h) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

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From GPA
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