

specified in section 505(b) of the Act [25 U.S.C. 458aaa-4(b)] for a compact or funding agreement entered into with the IHS under Title V.

**§ 137.226 How does a Self-Governance Tribe request a waiver?**

A Self-Governance Tribe may request a waiver by submitting a written request to the Secretary identifying the applicable Federal regulation(s) sought to be waived and the basis for the request.

**§ 137.227 How much time does the Secretary have to act on a waiver request?**

The Secretary must either approve or deny the requested waiver in writing within 90 days after receipt by the Secretary.

**§ 137.228 Upon what basis may the waiver request be denied?**

A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law.

**§ 137.229 What happens if the Secretary neither approves or denies a waiver request within the time specified in § 137.227?**

The waiver request is deemed approved.

**§ 137.230 Is the Secretary's decision on a waiver request final for the Department?**

Yes, the Secretary's decision on a waiver request is final for the Department.

**§ 137.231 May a Self-Governance Tribe appeal the Secretary's decision to deny its request for a waiver of a regulation promulgated under section 517 of the Act [25 U.S.C. 458aaa-16]?**

The decision may not be appealed under these regulations but may be appealed by the Self-Governance Tribe in Federal Court under applicable law.

**Subpart K—Withdrawal**

**§ 137.235 May an Indian Tribe withdraw from a participating inter-Tribal consortium or Tribal organization?**

Yes, an Indian Tribe may fully or partially withdraw from a participating inter-Tribal consortium or Tribal organization its share of any PSFAs included in a compact or funding agreement.

**§ 137.236 When does a withdrawal become effective?**

A withdrawal becomes effective within the time frame specified in the resolution that authorizes withdrawal from the participating Tribal organization or inter-Tribal consortium. In the absence of a specific time frame set forth in the resolution, such withdrawal becomes effective on

(a) The earlier of 1 year after the date of submission of such request, or the date on which the funding agreement expires; or

(b) Such date as may be mutually agreed upon by the Secretary, the withdrawing Indian Tribe, and the participating Tribal organization or inter-Tribal consortium that has signed the compact or funding agreement on behalf of the withdrawing Indian Tribe, inter-Tribal consortium, or Tribal organization.

**§ 137.237 How are funds redistributed when an Indian Tribe fully or partially withdraws from a compact or funding agreement and elects to enter a contract or compact?**

When an Indian Tribe eligible to enter into a contract under Title I or a compact or funding agreement under Title V fully or partially withdraws from a participating inter-Tribal consortium or Tribal organization, and has proposed to enter into a contract or compact and funding agreement covering the withdrawn funds:

(a) The withdrawing Indian Tribe is entitled to its Tribal share of funds supporting those PSFAs that the Indian Tribe will be carrying out under its own contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated in the funding agreement of the

## § 137.238

inter-Tribal consortium or Tribal organization); and

(b) the funds referred to in paragraph (a) of this section must be transferred from the funding agreement of the inter-Tribal consortium or Tribal organization, on the condition that the provisions of sections 102 [25 U.S.C. 450f] and 105(i) of the Act [25 U.S.C. 450j], as appropriate, apply to the withdrawing Indian Tribe.

### **§ 137.238 How are funds distributed when an Indian Tribe fully or partially withdraws from a compact or funding agreement administered by an inter-Tribal consortium or Tribal organization serving more than one Indian Tribe and the withdrawing Indian Tribe elects not to enter a contract or compact?**

All funds not obligated by the inter-Tribal consortium or Tribal organization associated with the withdrawing Indian Tribe's returned PSFAs, less close out costs, shall be returned by the inter-Tribal consortium or Tribal organization to the IHS for operation of the PSFAs included in the withdrawal.

### **§ 137.239 If the withdrawing Indian Tribe elects to operate PSFAs carried out under a compact or funding agreement under Title V through a contract under Title I, is the resulting contract considered a mature contract under section 4(h) of the Act [25 U.S.C. 450b(h)]?**

Yes, if the withdrawing Indian Tribe elects to operate PSFAs carried out under a compact or funding agreement under Title V through a contract under Title I, the resulting contract is considered a mature contract under section 4(h) of the Act [25 U.S.C. 450b(h)] at the option of the Indian Tribe.

## **Subpart L—Retrocession**

### **§ 137.245 What is retrocession?**

Retrocession means the return by a Self-Governance Tribe to the Secretary of PSFAs, that are included in a compact or funding agreement, for any reason, before the expiration of the term of the compact or funding agreement.

## 42 CFR Ch. I (10–1–06 Edition)

### **§ 137.246 How does a Self-Governance Tribe retrocede a PSFA?**

The Self-Governance Tribe submits a written notice to the Director of its intent to retrocede. The notice must specifically identify those PSFAs being retroceded. The notice may also include a proposed effective date of the retrocession.

### **§ 137.247 What is the effective date of a retrocession?**

Unless the request for retrocession is rescinded, the retrocession becomes effective within the timeframe specified by the parties in the compact or funding agreement. In the absence of a specification, the retrocession becomes effective on:

(a) The earlier of 1 year after:

(1) The date of submission of the request, or

(2) The date on which the funding agreement expires; or

(b) Whatever date is mutually agreed upon by the Secretary and the retroceding Self-Governance Tribe.

### **§ 137.248 What effect will a retrocession have on a retroceding Self-Governance Tribe's rights to contract or compact under the Act?**

A retrocession request shall not negatively affect:

(a) Any other contract or compact to which the retroceding Self-Governance Tribe is a party;

(b) Any other contracts or compacts the retroceding Self-Governance Tribe may request; and

(c) Any future request by such Self-Governance Tribe or an Indian Tribe to compact or contract for the same program.

### **§ 137.249 Will retrocession adversely affect funding available for the retroceded program?**

No, the Secretary shall provide no less than the same level of funding that would have been available if there had been no retrocession.

### **§ 137.250 How are funds distributed when a Self-Governance Tribe fully or partially retrocedes from its compact or funding agreement?**

Any funds not obligated by the Self-Governance Tribe and associated with the Self-Governance Tribe's returned