

§ 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.

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§ 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Unless the request for retrocession is rescinded, the retrocession becomes effective within the timeframe specified by the parties in the compact or funding agreement.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

PSFAs, less close out costs, must be returned by the Self-Governance Tribe to IHS for operation of the PSFA's associated with the compact or funding agreement from which the Self-Governance Tribe retroceded in whole or in part.

§ 137.251. What obligation does the retroceding Self-Governance Tribe have with respect to returning property that was provided by the Secretary under the compact or funding agreement and that was used in the operation of the retroceded program?

On the effective date of any retrocession, the retroceding Self-Governance Tribe, shall, at the option of the Secretary, deliver to the Secretary all requested property and equipment provided by the Secretary under the compact or funding agreement, to the extent used to carry out the retroceded PSFAs, which at the time of retrocession has a per item current fair market value, less the cost of improvements borne by the Self-Governance Tribe in excess of \$5,000 at the time of the retrocession.

Subpart M—Reassumption

§ 137.255 What does reassumption mean?

Reassumption means rescission by the Secretary without consent of the Self-Governance Tribe of PSFAs and associated funding in a compact or funding agreement and resuming responsibility to provide such PSFAs.

§ 137.256 Under what circumstances may the Secretary reassume a program, service, function, or activity (or portion thereof)?

(a) Subject to the steps in § 137.257, the Secretary may reassume a program, service, function, or activity (or portion thereof) and associated funding if the Secretary makes a specific finding relative to that PSFA of:

(1) Imminent endangerment of the public health caused by an act or omission of the Self-Governance Tribe, and the imminent endangerment arises out of a failure to carry out the compact or funding agreement; or

(2) Gross mismanagement with respect to funds transferred to the Self-

Governance Tribe by a compact or funding agreement, as determined by the Secretary, in consultation with the Inspector General, as appropriate.

(b) Immediate reassumption may occur under additional requirements set forth in § 137.261.

§ 137.257 What steps must the Secretary take prior to reassumption becoming effective?

Except as provided in § 137.261 for immediate reassumption, prior to a reassumption becoming effective, the Secretary must:

(a) Notify the Self-Governance Tribe in writing by certified mail of the details of findings required under § 137.256(a)(1) and (2);

(b) Request specified corrective action within a reasonable period of time, which in no case may be less than 45 days;

(c) Offer and provide, if requested, the necessary technical assistance and advice to assist the Self-Governance Tribe to overcome the conditions that led to the findings described under (a); and

(d) Provide the Self-Governance Tribe with a hearing on the record as provided under Subpart P of this part.

§ 137.258 Does the Self-Governance Tribe have a right to a hearing prior to a non-immediate reassumption becoming effective?

Yes, at the Self-Governance Tribe's request, the Secretary must provide a hearing on the record prior to or in lieu of the corrective action period identified in § 137.257(b).

§ 137.259 What happens if the Secretary determines that the Self-Governance Tribe has not corrected the conditions that the Secretary identified in the notice?

(a) The Secretary shall provide a second written notice by certified mail to the Self-Governance Tribe served by the compact or funding agreement that the compact or funding agreement will be rescinded, in whole or in part.

(b) The second notice shall include:

(1) The intended effective date of the reassumption;

(2) The details and facts supporting the intended reassumption; and