

**§ 1000.334 When will the retrocession become effective?**

Unless subsequently rescinded by the Tribe/Consortium, a retrocession is only effective on a date mutually agreed upon by the Tribe/Consortium and the Secretary, or as provided in the AFA.

**§ 1000.335 How will retrocession affect the Tribe's/Consortium's existing and future AFAs?**

Retrocession does not affect other parts of the AFA or funding agreements with other bureaus. A Tribe/Consortium may request to negotiate for and include retroceded programs in future AFAs or through a self-determination contract.

**§ 1000.336 Does the Tribe/Consortium have to return funds used in the operation of a retroceded program?**

The Tribe/Consortium and the Secretary must negotiate the amount of funding to be returned to the Secretary for the operation of the retroceded program. This amount must be based on such factors as the time remaining or functions remaining in the funding cycle or as provided in the AFA.

**§ 1000.337 Does the Tribe/Consortium have to return property used in the operation of a retroceded program?**

On the effective date of any retrocession, the Tribe/Consortium must return all property and equipment, and title thereto:

- (a) That was acquired under the AFA for the program being retroceded; and
- (b) That has a per item value in excess of \$5,000 at the time of the retrocession, or as otherwise provided in the AFA.

**§ 1000.338 What happens to a Tribe's/Consortium's mature contract status if it has retroceded a program that is also available for self-determination contracting?**

Retrocession has no effect on mature contract status, provided that the 3 most recent audits covering activities administered by the Tribe have no unresolved material audit exceptions.

**§ 1000.339 How does retrocession affect a bureau's operation of the retroceded program?**

The level of operation of the program will depend upon the amount of funding that is returned with the retrocession.

**Subpart O—Trust Evaluation Review****§ 1000.350 What is the purpose of this subpart?**

This subpart describes how the trust responsibility of the United States is legally maintained through a system of trust evaluations when Tribes/Consortia perform trust functions through AFAs under the Tribal Self-Governance Act of 1994. It describes the principles and processes upon which trust evaluations will be based.

**§ 1000.351 Does the Tribal Self-Governance Act of 1994 alter the trust responsibility of the United States to Indian Tribes and individuals under self-governance?**

No, the Act does, however, permit a Tribe/Consortium to assume management responsibilities for trust assets and resources on its own behalf and on behalf of individual Indians. Under the Act, the Secretary has a trust responsibility to conduct annual trust evaluations of Tribal performance of trust functions to ensure that Tribal and individual trust assets and resources are managed in accordance with the legal principles and standards governing the performance of trust functions if trust assets or resources are found to be in imminent jeopardy.

**§ 1000.352 What are "trust resources" for the purposes of the trust evaluation process?**

- (a) Trust resources include property and interests in property:
  - (1) That are held in trust by the United States for the benefit of a Tribe or individual Indians; or
  - (2) That are subject to restrictions upon alienation.
- (b) Trust assets include:
  - (1) Other assets, trust revenue, royalties, or rental, including natural resources, land, water, minerals, funds,

**§ 1000.353**

**25 CFR Ch. VI (4-1-06 Edition)**

property, assets, or claims, and any intangible right or interest in any of the foregoing;

(2) Any other property, asset, or interest therein, or treaty right for which the United States is charged with a trust responsibility. For example, water rights and off-reservation treaty rights.

(c) This definition defines trust resources for purposes of the trust evaluation process only.

**§ 1000.353 What are “trust functions” for the purposes of the trust evaluation process?**

Trust functions are those programs necessary to the management of assets held in trust by the United States for an Indian Tribe or individual Indian.

**ANNUAL TRUST EVALUATIONS**

**§ 1000.354 What is a trust evaluation?**

A trust evaluation is an annual review and evaluation of trust functions performed by a Tribe/Consortium to ensure that the functions are performed in accordance with trust standards as defined by Federal law. Trust evaluations address trust functions performed by the Tribe/Consortium on its own behalf as well as trust functions performed by the Tribe/Consortium for the benefit of individual Indians or Alaska Natives.

**§ 1000.355 How are trust evaluations conducted?**

(a) Each year the Secretary’s designated representative(s) will conduct trust evaluations for each self-governance AFA. The Secretary’s designated representative(s) will coordinate with the designated Tribe’s/Consortium’s representative(s) throughout the review process, including the written report required by § 1000.365.

(b) This section describes the general framework for trust reviews. However, each Tribe/Consortium may develop, with the appropriate bureau, an individualized trust evaluation process to allow for the Tribe’s/Consortium’s unique history and circumstances and the terms and conditions of its AFA. An individualized trust evaluation process must, at a minimum, contain

the measures in paragraph (d) of this section.

(c) To facilitate the review process so as to mitigate costs and maximize efficiency, each Tribe/Consortium must provide access to all records, plans, and other pertinent documents relevant to the program(s) under review not otherwise available to the Department.

(d) The Secretary’s designated representative(s) will:

- (1) Review trust transactions;
- (2) Conduct on-site inspections of trust resources, as appropriate;
- (3) Review compliance with applicable statutory and regulatory requirements;
- (4) Review compliance with the trust provisions of the AFA;
- (5) Ensure that the same level of trust services is provided to individual Indians as would have been provided by the Secretary;
- (6) Document deficiencies in the performance of trust functions discovered during the review process; and
- (7) Ensure the fulfillment of the Secretary’s trust responsibility to Tribes and individual Indians by documenting the existence of:
  - (i) Systems of internal controls;
  - (ii) Trust standards; and
  - (iii) Safeguards against conflicts of interest in the performance of trust functions.

(e) At the request of a Tribe/Consortium, at the time the AFA is negotiated, the standards will be negotiated, except where standards are otherwise provided for by law.

**§ 1000.356 May the trust evaluation process be used for additional reviews?**

Yes, if the parties agree.

**§ 1000.357 May the parties negotiate standards of review for purposes of the trust evaluation?**

Yes, unless standards are otherwise provided by Federal treaties, statutes, case law or regulations not waived, the Secretary’s designated representative will negotiate standards of review at the request of the Tribe/Consortium.