

Coordination with Indian Tribal Governments.” Tribal officials and the effected tribal constituency were given the opportunity for meaningful and timely input in the development of the final rule.

### NEPA Compliance

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

### Federal Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), OSG submitted the information collection and record keeping requirements of 25 CFR Part 1000 to the Office of Management and Budget (OMB) for review and approval. The OMB approved the self-governance information collection and assigned control number 1076-0143 to it.

#### 25 CFR Part 1000

*Title:* Annual Funding Agreements Under the Tribal Self-Governance Act Amendments to the Indian Self-Determination and Education Act.

*OMB Control Number:* 1076-0143.

*Abstract:* The Department of the Interior and Indian government representatives negotiated a rule to implement section 407 of Pub. L. 103-413, the Tribal Self-Governance Act of 1994. As required by section 407 of the Act, the Secretary, upon request of a majority of the self-governance Tribes, initiated procedures under subchapter III of Chapter 5 of Title 5, U.S.C., to negotiate and promulgate regulations that are necessary to carry out title IV. This rule will allow the Department to negotiate annual funding agreements with self-governance Tribes for programs, services, functions and activities conducted by the Department. The Department developed this negotiated rulemaking with active Tribal participation, and it contains the proposed information collection.

*Need for and Use:* The information provided by the Tribes will be used by the Department of the Interior for a variety of purposes. The first purpose will be to ensure that qualified applicants are admitted into the applicant pool consistent with the requirements of the Act. In addition, Tribes seeking grant assistance to meet the planning requirements for admission into the applicant pool will provide information so that grants can be awarded to Tribes meeting basic eligibility (i.e. Tribal resolution indicating that the Tribe wants to plan for self-governance and has no material audit exceptions for the last three years).

Other documentation is required to meet the reporting requirements as called for in Section 405 of the Act.

*Respondents:* Tribes and Tribal Consortia that may be affected by self-governance activities or request funding for projects or services.

*Total Annual Burden:* Refer to proposed 25 CFR 1000.3 for a detailed table of the burden estimates anticipated by this rulemaking.

*Comments were invited on:*

(a) Whether the proposed collection of information is necessary for the proper performance of the Department of the Interior, including whether the information will have practical utility;

(b) The accuracy of OSG's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of collection on the respondents. No comments were received concerning the information collection requirements of this rule.

No comments were received on the information collection issues in the proposed regulation. Under the Paperwork Reduction Act, OSG must obtain OMB approval of all information and record keeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. This number appears in 25 CFR 1000.3. To obtain a copy of OSG's information collection clearance requests, explanatory information, and related form, contact the Information Collection Clearance Officer, Office of Self-Governance, at (202) 219-0240.

### List of Subjects in 25 CFR Part 1000

Grant programs—Indians, Indians.

Dated: September 5, 2001.

**Bruce Babbitt,**

*Secretary of the Interior.*

For the reasons set out in the preamble, the Department of the Interior adds a new part 1000 in chapter VI of title 25 of the Code of Federal Regulations as set forth below.

## PART 1000—ANNUAL FUNDING AGREEMENTS UNDER THE TRIBAL SELF-GOVERNMENT ACT AMENDMENTS TO THE INDIAN SELF-DETERMINATION AND EDUCATION ACT

### Subpart A—General Provisions

Sec.

- 1000.1 Authority.
- 1000.2 Definitions.
- 1000.3 Purpose and scope.
- 1000.4 Policy statement.

### Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

#### Purpose and Definitions

- 1000.10 What is the purpose of this subpart?
- 1000.11 What is the “applicant pool”?
- 1000.12 What is a “signatory”?
- 1000.13 What is a “nonsignatory Tribe”?

#### Eligibility

- 1000.14 Who is eligible to participate in Tribal self-governance?
- 1000.15 How many additional Tribes/Consortia may participate in self-governance per year?
- 1000.16 What criteria must a Tribe/Consortium satisfy to be eligible for admission to the “applicant pool”?
- 1000.17 What documents must a Tribe/Consortium submit to OSG to apply for admission to the applicant pool?
- 1000.18 May a Consortium member Tribe withdraw from the Consortium and become a member of the applicant pool?
- 1000.19 What is done during the “planning phase”?
- 1000.20 What is required in a planning report?
- 1000.21 When does a Tribe/Consortium have a “material audit exception”?
- 1000.22 What are the consequences of having a material audit exception?

#### Admission Into the Applicant Pool

- 1000.23 How is a Tribe/Consortium admitted to the applicant pool?
- 1000.24 When does OSG accept applications to become a member of the applicant pool?
- 1000.25 What are the deadlines for a Tribe/Consortium in the applicant pool to negotiate a compact and annual funding agreement (AFA)?
- 1000.26 Under what circumstances will a Tribe/Consortium be removed from the applicant pool?
- 1000.27 How does the Director select which Tribes in the applicant pool become self-governance Tribes?
- 1000.28 What happens if an application is not complete?
- 1000.29 What happens if a Tribe/Consortium is selected from the applicant pool but does not execute a compact and an AFA during the calendar year?
- 1000.30 May a Tribe/Consortium be selected to negotiate an AFA under section 403(b)(2) without having or negotiating an AFA under section 403(b)(1)?
- 1000.31 May a Tribe/Consortium be selected to negotiate an AFA under section 403(c) without negotiating an AFA under section 403(b)(1) and/or section 403(b)(2)?

#### Withdrawal From a Consortium Annual Funding Agreement

- 1000.32 What happens when a Tribe wishes to withdraw from a Consortium annual funding agreement?

1000.33 What amount of funding is to be removed from the Consortium's AFA for the withdrawing Tribe?

1000.34 What happens if there is a dispute between the Consortium and the withdrawing Tribe?

1000.35 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?

#### **Subpart C—Section 402(d) Planning and Negotiation Grants**

##### **Purpose and Types of Grants**

1000.40 What is the purpose of this subpart?

1000.41 What types of grants are available?

##### **Availability, Amount, and Number of Grants**

1000.42 Will grants always be made available to meet the planning phase requirement as described in section 402(d) of the Act?

1000.43 May a Tribe/Consortium use its own resources to meet its self-governance planning and negotiation expenses?

1000.44 What happens if there are insufficient funds to meet the Tribal requests for planning/negotiation grants in any given year?

1000.45 How many grants will the Department make each year and what funding will be available?

##### **Selection Criteria**

1000.46 Which Tribes/Consortia may be selected to receive a negotiation grant?

1000.47 What must a Tribe/Consortium do to receive a negotiation grant?

1000.48 What must a Tribe do if it does not wish to receive a negotiation grant?

##### **Advance Planning Grant Funding**

1000.49 Who can apply for an advance planning grant?

1000.50 What must a Tribe/Consortium seeking a planning grant submit in order to meet the planning phase requirements?

1000.51 How will Tribes/Consortia know when and how to apply for planning grants?

1000.52 What criteria will the Director use to award advance planning grants?

1000.53 Can Tribes/Consortia that receive advance planning grants also apply for a negotiation grant?

1000.54 How will a Tribe/Consortium know whether or not it has been selected to receive an advance planning grant?

1000.55 Can a Tribe/Consortium appeal within DOI the Director's decision not to award a grant under this subpart?

#### **Subpart D—Other Financial Assistance for Planning and Negotiations Grants for Non-BIA Programs**

##### **Purpose and Eligibility**

1000.60 What is the purpose of this subpart?

1000.61 Are other funds available to self-governance Tribes/Consortia for

planning and negotiating with non-BIA bureaus?

##### **Eligibility and Application Process**

1000.62 Who can apply to OSG for grants to plan and negotiate non-BIA programs?

1000.63 Under what circumstances may planning and negotiation grants be awarded to Tribes/Consortia?

1000.64 How does the Tribe/Consortium know when and how to apply to OSG for a planning and negotiation grant?

1000.65 What kinds of activities do planning and negotiation grants support?

1000.66 What must be included in the application?

1000.67 How will the Director award planning and negotiation grants?

1000.68 May non-BIA bureaus provide technical assistance to a Tribe/Consortium in drafting its planning grant application?

1000.69 How can a Tribe/Consortium obtain comments or selection documents received or utilized after OSG has made a decision on a planning grant application?

1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?

1000.71 Can an applicant appeal a decision not to award a grant?

1000.72 Will OSG notify Tribes/Consortia and affected non-BIA bureaus of the results of the selection process?

1000.73 Once a Tribe/Consortium has been awarded a grant, may the Tribe/Consortium obtain information from a non-BIA bureau?

#### **Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs**

1000.80 What is the purpose of this subpart?

1000.81 What is an annual funding agreement (AFA)?

##### **Contents and Scope of Annual Funding Agreements**

1000.82 What types of provisions must be included in a BIA AFA?

1000.83 Can additional provisions be included in an AFA?

1000.84 Does a Tribe/Consortium have the right to include provisions of Title I of Pub. L. 93-638 in an AFA?

1000.85 Can a Tribe/Consortium negotiate an AFA with a term that exceeds one year?

##### **Determining What Programs May Be Included in an AFA**

1000.86 What types of programs may be included in an AFA?

1000.87 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the Tribe/Consortium and those retained by the Secretary?

1000.88 Do Tribes/Consortia need Secretarial approval to redesign BIA programs that the Tribe/Consortium administers under an AFA?

1000.89 Can the terms and conditions in an AFA be amended during the year it is in effect?

1000.90 What happens if an AFA expires before the effective date of the successor AFA?

##### **Determining AFA Amounts**

1000.91 What funds must be transferred to a Tribe/Consortium under an AFA?

1000.92 What funds may not be included in an AFA?

1000.93 May the Secretary place any requirements on programs and funds that are otherwise available to Tribes/Consortia or Indians for which appropriations are made to agencies other than DOI?

1000.94 What are BIA residual funds?

1000.95 How is BIA's residual determined?

1000.96 May a Tribe/Consortium continue to negotiate an AFA pending an appeal of residual functions and amounts?

1000.97 What is a Tribal share?

1000.98 How does BIA determine a Tribe's/Consortium's share of funds to be included in an AFA?

1000.99 Can a Tribe/Consortium negotiate a Tribal share for programs outside its region/agency?

1000.100 May a Tribe/Consortium obtain funding that is distributed on a discretionary or competitive basis?

1000.101 Are all funds identified as Tribal shares always paid to the Tribe/Consortium under an AFA?

1000.102 How are savings that result from downsizing allocated?

1000.103 Do Tribes/Consortia need Secretarial approval to reallocate funds between programs that the Tribe/Consortium administers under the AFA?

1000.104 Can funding amounts negotiated in an AFA be adjusted during the year it is in effect?

##### **Establishing Self-Governance Base Budgets**

1000.105 What are self-governance base budgets?

1000.106 Once a Tribe/Consortium establishes a base budget, are funding amounts renegotiated each year?

1000.107 Must a Tribe/Consortium with a base budget or base budget-eligible program amounts negotiated before January 16, 2001 negotiate new Tribal shares and residual amounts?

1000.108 How are self-governance base budgets established?

1000.109 How are self-governance base budgets adjusted?

#### **Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements**

##### **Purpose**

1000.120 What is the purpose of this subpart?

1000.121 What is an annual funding agreement for a non-BIA program?

##### **Eligibility**

1000.122 What non-BIA programs are eligible for inclusion in an AFA?

1000.123 Are there non-BIA programs for which the Secretary must negotiate for inclusion in an AFA subject to such terms as the parties may negotiate?

1000.124 What programs are included under section 403(b)(2) of the Act?

- 1000.125 What programs are included under section 403(c)?
- 1000.126 What does "special geographic, historical or cultural" mean?
- 1000.127 Under section 403(b)(2), when must programs be awarded non-competitively?
- 1000.128 Is there a contracting preference for programs of special geographic, historical, or cultural significance?
- 1000.129 Are there any programs that may not be included in an AFA?
- 1000.130 Does a Tribe/Consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?
- 1000.131 Will Tribes/Consortia participate in the Secretary's determination of what is to be included on the annual list of available programs?
- 1000.132 How will the Secretary consult with Tribes/Consortia in developing the list of available programs?
- 1000.133 What else is on the list in addition to eligible programs?
- 1000.134 May a bureau negotiate with a Tribe/Consortium for programs not specifically included on the annual section 405(c) list?
- 1000.135 How will a bureau negotiate an annual funding agreement for a program of special geographic, historical, or cultural significance to more than one Tribe?
- 1000.136 When will this determination be made?

#### Funding

- 1000.137 What funds are included in an AFA?
- 1000.138 How are indirect cost rates determined?
- 1000.139 Will the established indirect cost rate always apply to new AFAs?
- 1000.140 How does the Secretary determine the amount of indirect contract support costs?
- 1000.141 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates?
- 1000.142 Instead of the negotiated indirect cost rate, is it possible to establish a fixed amount or another negotiated rate for indirect costs where funds are limited?

#### Other Terms and Conditions

- 1000.143 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?

#### Reallocation, Duration and Amendments

- 1000.144 Can a Tribe reallocate funds for a non-BIA non-Indian program?
- 1000.145 Do Tribes/Consortia need Secretarial approval to reallocate funds between Title-I eligible programs that the Tribe/Consortium administers under a non-BIA AFA?
- 1000.146 Can a Tribe/Consortium negotiate an AFA with a non-BIA bureau for which the performance period exceeds one year?

- 1000.147 Can the terms and conditions in a non-BIA AFA be amended during the year it is in effect?
- 1000.148 What happens if an AFA expires before the effective date of the successor AFA?

#### Subpart G—Negotiation Process for Annual Funding Agreements

##### Purpose

- 1000.160 What is the purpose of this subpart?

##### Negotiating a Self-Governance Compact

- 1000.161 What is a self-governance compact?
- 1000.162 What is included in a self-governance compact?
- 1000.163 Can a Tribe negotiate other terms and conditions not contained in the model compact?
- 1000.164 Can a Tribe/Consortium have an AFA without entering into a compact?
- 1000.165 Are provisions in compacts negotiated before January 16, 2001, effective after implementation?

##### Negotiation of Initial Annual Funding Agreements

- 1000.166 What are the phases of the negotiation process?
- 1000.167 Who may initiate the information phase?
- 1000.168 Is it mandatory to go through the information phase before initiating the negotiation phase?
- 1000.169 How does a Tribe/Consortium initiate the information phase?
- 1000.170 What is the letter of interest?
- 1000.171 When should a Tribe/Consortium submit a letter of interest?
- 1000.172 What steps does the bureau take after a letter of interest is submitted by a Tribe/Consortium?
- 1000.173 How does a newly selected Tribe/Consortium initiate the negotiation phase?
- 1000.174 How and when does the bureau respond to a request to negotiate?
- 1000.175 What is the process for conducting the negotiation phase?
- 1000.176 What issues must the bureau and the Tribe/Consortium address at negotiation meetings?
- 1000.177 What happens when the AFA is signed?
- 1000.178 When does the AFA become effective?
- 1000.179 What happens if the Tribe/Consortium and bureau negotiators fail to reach an agreement?

##### Negotiation Process for Successor Annual Funding Agreements

- 1000.180 What is a successor AFA?
- 1000.181 How does the Tribe/Consortium initiate the negotiation of a successor AFA?
- 1000.182 What is the process for negotiating a successor AFA?

##### Subpart H—Limitation and/or Reduction of Services, Contracts, and Funds

- 1000.190 What is the purpose of this subpart?
- 1000.191 To whom does this subpart apply?

- 1000.192 What services, contracts, or funds are protected under section 406(a)?
- 1000.193 Who may raise the issue of limitation or reduction of services, contracts, or funding?
- 1000.194 When must BIA raise the issue of limitation or reduction of services, contracts, or funding?
- 1000.195 When must an affected Tribe/Consortium or Tribal organization raise the issue of a limitation or reduction of services, contracts, or funding for which it is eligible?
- 1000.196 What must be included in a finding by BIA or in a claim by or an affected Tribe/Consortium or Tribal organization regarding the issue of a limitation or reduction of services?
- 1000.197 How will BIA resolve a claim?
- 1000.198 How must a limitation or reduction in services, contracts, or funds be remedied?

##### Subpart I—Public Consultation Process

- 1000.210 When does a non-BIA bureau use a public consultation process related to the negotiation of an AFA?
- 1000.211 Will the bureau contact the Tribe/Consortium before initiating public consultation process for a non-BIA AFA under negotiation?
- 1000.212 What is the role of the Tribe/Consortium when a bureau initiates a public meeting?
- 1000.213 What should the bureau do if it is invited to attend a meeting with respect to the Tribe's/Consortium's proposed AFA?
- 1000.214 Will the bureau and the Tribe/Consortium share information concerning inquiries about the Tribes/Consortia and the AFA?

##### Subpart J—Waiver of Regulations

- 1000.220 What regulations apply to self-governance Tribes?
- 1000.221 Can the Secretary grant a waiver of regulations to a Tribe/Consortium?
- 1000.222 How does a Tribe/Consortium obtain a waiver?
- 1000.223 When can a Tribe/Consortium request a waiver of a regulation?
- 1000.224 How can a Tribe/Consortium expedite the review of a regulation waiver request?
- 1000.225 Are meetings or discussions mandatory?
- 1000.226 On what basis may the Secretary deny a waiver request?
- 1000.227 What happens if the Secretary denies the waiver request?
- 1000.228 What are examples of waivers prohibited by law?
- 1000.229 May a Tribe/Consortium propose a substitute for a regulation it wishes to be waived?
- 1000.230 How is a waiver approval documented for the record?
- 1000.231 How does a Tribe/Consortium request a reconsideration of the Secretary's denial of a waiver?
- 1000.232 When must DOI respond to a request for reconsideration?

**Subpart K—Construction**

- 1000.240 What construction programs included in an AFA are subject to this subpart?
- 1000.241 Does this subpart create an agency relationship?
- 1000.242 What provisions relating to a construction program may be included in an AFA?
- 1000.243 What special provisions must be included in an AFA that contains a construction program?
- 1000.244 May the Secretary suspend construction activities under an AFA?
- 1000.245 May a Tribe/Consortium continue work with construction funds remaining in an AFA at the end of the funding year?
- 1000.246 Must an AFA that contains a construction project or activity incorporate provisions of Federal construction standards?
- 1000.247 May the Secretary require design provisions and other terms and conditions for construction programs or activities included in an AFA under section 403(c) of the Act?
- 1000.248 What is the Tribe's/Consortium's role in a construction program included in an AFA?
- 1000.249 What is the Secretary's role in a construction program in an AFA?
- 1000.250 How are property and funding returned if there is a reassumption for substantial failure to carry out an AFA?
- 1000.251 What happens when a Tribe/Consortium is suspended for substantial failure to carry out the terms of an AFA without good cause and does not correct the failure during the suspension?
- 1000.252 Do all provisions of other subparts apply to construction portions of AFAs?
- 1000.253 When a Tribe withdraws from a Consortium, is the Secretary required to award to the withdrawing Tribe a portion of funds associated with a construction project if the withdrawing Tribe so requests?
- 1000.254 May a Tribe/Consortium reallocate funds from a construction program to a non-construction program?
- 1000.255 May a Tribe/Consortium reallocate funds among construction programs?
- 1000.256 Must the Secretary retain project funds to ensure proper health and safety standards in construction projects?

**Subpart L—Federal Tort Claims**

- 1000.270 What does this subpart cover?
- 1000.271 What other statutes and regulations apply to FTCA coverage?
- 1000.272 Do Tribes/Consortia need to be aware of areas which FTCA does not cover?
- 1000.273 Is there a deadline for filing FTCA claims?
- 1000.274 How long does the Federal government have to process a FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?
- 1000.275 Is it necessary for a self-governance AFA to include any clauses about FTCA coverage?

- 1000.276 Does FTCA apply to a self-governance AFA if FTCA is not referenced in the AFA?
- 1000.277 To what extent shall the Tribe/Consortium cooperate with the Federal government in connection with tort claims arising out of the Tribe's/Consortium's performance?
- 1000.278 Does this coverage extend to subcontractors of self-governance AFAs?
- 1000.279 Is FTCA the exclusive remedy for a tort claim, including a claim concerning personal injury or death, resulting from the performance of a self-governance AFA?
- 1000.280 What employees are covered by FTCA for medical-related claims?
- 1000.281 Does FTCA cover employees of the Tribe/Consortium who are paid by the Tribe/Consortium from funds other than those provided through the self-governance AFA?
- 1000.282 May persons who are not Indians or Alaska Natives assert claims under FTCA?
- 1000.283 If the Tribe/Consortium or the Tribe's/Consortium's employee receives a summons and/or complaint alleging a tort covered by FTCA, what should a Tribe/Consortium do?

**Subpart M—Reassumption**

- 1000.300 What is the purpose of this subpart?
- 1000.301 When may the Secretary reassume a Federal program operated by a Tribe/Consortium under an AFA?
- 1000.302 What is "imminent jeopardy" to a trust asset?
- 1000.303 What is imminent jeopardy to natural resources?
- 1000.304 What is imminent jeopardy to public health and safety?
- 1000.305 In an imminent jeopardy situation, what must the Secretary do?
- 1000.306 Must the Secretary always reassume a program, upon a finding of imminent jeopardy?
- 1000.307 What happens if the Secretary's designated representative determines that the Tribe/Consortium cannot mitigate the conditions within 60 days?
- 1000.308 What will the notice of reassumption include?
- 1000.309 How much time will a Tribe/Consortium have to respond to a notice of imminent jeopardy?
- 1000.310 What information must the Tribe's/Consortium's response contain?
- 1000.311 How will the Secretary reply to the Tribe's/Consortium's response?
- 1000.312 What happens if the Secretary accepts the Tribe's/Consortium's proposed measures?
- 1000.313 What happens if the Secretary does not accept the Tribe's/Consortium's proposed measures?
- 1000.314 What must a Tribe/Consortium do when a program is reassumed?
- 1000.315 When must the Tribe/Consortium return funds to the Department?
- 1000.316 May the Tribe/Consortium be reimbursed for actual and reasonable "wind up costs" incurred after the effective date of retrocession?

- 1000.317 Is a Tribe's/Consortium's general right to negotiate an AFA adversely affected by a reassumption action?
- 1000.318 When will the Secretary return management of a reassumed program?

**Subpart N—Retrocession**

- 1000.330 What is the purpose of this subpart?
- 1000.331 Is a decision by a Tribe/Consortium not to include a program in a successor agreement considered a retrocession?
- 1000.332 Who may retrocede a program in an AFA?
- 1000.333 How does a Tribe/Consortium retrocede a program?
- 1000.334 When will the retrocession become effective?
- 1000.335 How will retrocession affect the Tribe's/Consortium's existing and future AFAs?
- 1000.336 Does the Tribe/Consortium have to return funds used in the operation of a retroceded program?
- 1000.337 Does the Tribe/Consortium have to return property used in the operation of a retroceded program?
- 1000.338 What happens to a Tribe's/Consortium's mature contractor status if it has retroceded a program that is also available for self-determination contracting?
- 1000.339 How does retrocession affect a bureau's operation of the retroceded program?

**Subpart O—Trust Evaluation Review**

- 1000.350 What is the purpose of this subpart?
- 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?
- 1000.352 What are "trust resources" for the purposes of the trust evaluation process?
- 1000.353 What are "trust functions" for the purposes of the trust evaluation process?

**Annual Trust Evaluations**

- 1000.354 What is a trust evaluation?
- 1000.355 How are trust evaluations conducted?
- 1000.356 May the trust evaluation process be used for additional reviews?
- 1000.357 May the parties negotiate standards of review for purposes of the trust evaluation?
- 1000.358 Can an initial review of the status of the trust asset be conducted?
- 1000.359 What are the responsibilities of the Secretary's designated representative(s) after the annual trust evaluation?
- 1000.360 Is the trust evaluation standard or process different when the trust asset is held in trust for an individual Indian or Indian allottee?
- 1000.361 Will the annual review include a review of the Secretary's residual trust functions?
- 1000.362 What are the consequences of a finding of imminent jeopardy in the annual trust evaluation?
- 1000.363 What if the trust evaluation reveals problems that do not rise to the level of imminent jeopardy?

- 1000.364 Who is responsible for corrective action?
- 1000.365 What are the requirements of the review team report?
- 1000.366 Can the Department conduct more than one trust evaluation per Tribe per year?
- 1000.367 Will the Department evaluate a Tribe's/Consortium's performance of non-trust related programs?

#### Subpart P—Reports

- 1000.380 What is the purpose of this subpart?
- 1000.381 How is information about self-governance developed and reported?
- 1000.382 What may the Tribe's/Consortium's annual report on self-governance address?

#### Subpart Q—Miscellaneous Provisions

- 1000.390 How can a Tribe/Consortium hire a Federal employee to help implement an AFA?
- 1000.391 Can a Tribe/Consortium employee be detailed to a Federal service position?
- 1000.392 How does the Freedom of Information Act apply?
- 1000.393 How does the Privacy Act apply?
- 1000.394 What audit requirements must a self-governance Tribe/Consortium follow?
- 1000.395 Do OMB circulars and revisions apply to self-governance funding agreements?
- 1000.396 Does a Tribe/Consortium have additional ongoing requirements to maintain minimum standards for Tribe/Consortium management systems?
- 1000.397 Are there any restrictions on how AFA funds may be spent?
- 1000.398 May a Tribe/Consortium invest funds received under a self-governance agreement?
- 1000.399 How may interest or investment income that accrues on AFAs be used?
- 1000.400 Can a Tribe/Consortium retain savings from programs?
- 1000.401 Can a Tribe/Consortium carry over funds not spent during the term of the AFA?
- 1000.402 After a non-BIA AFA has been executed and the funds transferred to a Tribe/Consortium, can a bureau request the return of funds?
- 1000.403 How can a person or group appeal a decision or contest an action related to a program operated by a Tribe/Consortium under an AFA?
- 1000.404 Must self-governance Tribes/Consortia comply with the Secretarial approval requirements of 25 U.S.C. 81, 82a, and 476 regarding professional and attorney contracts?
- 1000.405 Are AFA funds non-Federal funds for the purpose of meeting matching requirements?
- 1000.406 Does Indian preference apply to services, activities, programs and functions performed under a self-governance AFA?
- 1000.407 Do the wage and labor standards in the Davis-Bacon Act apply to Tribes and Tribal Consortia?

#### Supply Sources

- 1000.408 Can a Tribe/Consortium use Federal supply sources in the performance of an AFA?

#### Prompt Payment Act

- 1000.409 Does the Prompt Payment Act (31 U.S.C. 3901) apply to a non-BIA, non-Indian program AFA?

#### Subpart R—Appeals

- 1000.420 What does "Title-I eligible programs" mean in this subpart?
- 1000.421 What is the purpose of this subpart?
- 1000.422 How must disputes be handled?
- 1000.423 Are there any decisions that are not administratively appealable under this subpart?
- 1000.424 Does a Tribe/Consortium have a right to an informal conference to resolve any disputes?
- 1000.425 How does a Tribe/Consortium request an informal conference?
- 1000.426 How is an informal conference held?
- 1000.427 What happens after the informal conference?
- 1000.428 How may a Tribe/Consortium appeal a decision made after the AFA or compact or amendment to an AFA or compact has been signed?
- 1000.429 What statutes and regulations govern resolution of disputes concerning signed AFAs or compacts that are appealed to IBCA?
- 1000.430 To whom are appeals directed regarding reassumption for imminent jeopardy?
- 1000.431 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?
- 1000.432 To whom may a Tribe appeal a decision made before the AFA or an amendment to the AFA or compact is signed?
- 1000.433 When and how must a Tribe/Consortium appeal an adverse pre-award decision?
- 1000.434 When must the bureau head (or appropriate Assistant Secretary) issue a final decision in the pre-award appeal?
- 1000.435 When and how will the Assistant Secretary respond to an appeal by a Tribe/Consortium?
- 1000.436 How may a Tribe/Consortium seek reconsideration of the Secretary's decision involving a self-governance compact?
- 1000.437 When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?
- 1000.438 May Tribes/Consortia appeal Department decisions to a Federal court?

#### Subpart S—Conflicts of Interest

- 1000.460 What is an organizational conflict of interest?
- 1000.461 What must a Tribe/Consortium do if an organizational conflict of interest arises under an AFA?
- 1000.462 When must a Tribe/Consortium regulate its employees or subcontractors to avoid a personal conflict of interest?
- 1000.463 What types of personal conflicts of interest involving Tribal officers,

employees or subcontractors would have to be regulated by a Tribe/Consortium?

- 1000.464 What personal conflicts of interest must the standards of conduct regulate?

- 1000.465 May a Tribe/Consortium negotiate AFA provisions on conflicts of interest to take the place of this subpart?

Appendix A—to Part 1000—Model Compact of Self-Governance Between the Tribe and the Department of the Interior

Authority: 25 U.S.C. 458aa-gg.

#### Subpart A—General Provisions

##### § 1000.1 Authority.

This part is prepared and issued by the Secretary of the Interior under the negotiated rulemaking procedures in 5 U.S.C. 565.

##### § 1000.2 Definitions.

*403(c) Program* means a non-BIA program eligible under section 403(c) of the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. 450 *et seq.* and, specifically, a program, function, service, or activity that is of special geographic, historical or cultural significance to a self-governance Tribe/Consortium. These programs may be referred to, also, as "nexus" programs.

*Act* means the Tribal Self-Governance Act, Title IV of the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93-638, as added by Pub. L. 103-413, amended by Pub. L. 104-109, as amended.

*Applicant pool* means Tribes/Consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance in accordance with § 1000.16 of these regulations.

*BIA* means the Bureau of Indian Affairs of the Department of the Interior.

*BIA Program* means any program, service, function, or activity, or portion thereof, that is performed or administered by the Department through the Bureau of Indian Affairs.

*Bureau* means a bureau or office of the Department of the Interior.

*Compact* means an executed document that affirms the government-to-government relationship between a self-governance Tribe and the United States. The compact differs from an annual funding agreement (AFA) in that parts of the compact apply to all bureaus within the Department of the Interior rather than a single bureau.

*Consortium* means an organization of Indian Tribes that is authorized by those Tribes to participate in self-governance under this part and is responsible for negotiating, executing, and implementing annual funding agreements and compacts.

*Construction management services (CMS)* means activities limited to