

## § 224.133

(b) The Secretary will communicate with the Designated Tribal Official throughout the process established by this section.

(c) During the periodic review and evaluation, the Secretary will:

(1) Review relevant records and documents, including transactions and reports the Tribe prepares under the TERA;

(2) Conduct on-site inspections as appropriate; and

(3) Review compliance with statutes and regulations applicable to activities undertaken under the TERA.

(d) Review the effect on physical trust assets resulting from activities undertaken under a TERA.

(e) Upon written request, the Tribe should provide the Secretary with records and documents relevant to the provisions of the TERA. In addition, the Tribe should identify any information in these submitted records and documents that is confidential, commercial and financial. Specific exceptions to disclosure under the Freedom of Information Act, or other statutory protections against disclosure, may apply and preclude disclosure of this information to third parties as provided for in § 224.55.

### **§ 224.133 What must the Secretary do after a periodic review and evaluation?**

After a periodic review and evaluation, the Secretary must prepare a written report of the results and send the report to the Designated Tribal Official.

### **§ 224.134 How often must the Secretary conduct a periodic review and evaluation?**

The Secretary must conduct a periodic review and evaluation annually during the first 3 years of a TERA. After the third annual review and evaluation, the Secretary and the Tribe may mutually agree to amend the TERA to conduct periodic reviews and evaluations once every 2 years.

### **§ 224.135 Under what circumstances may the Secretary conduct additional reviews and evaluations?**

The Secretary may conduct additional reviews and evaluations:

(a) At a Tribe's request;

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(b) As part of an investigation undertaken when the Tribe notifies the Secretary of a violation or breach;

(c) As part of an investigation undertaken because of a petition submitted under subpart E of this part;

(d) As follow-up to a determination that harm or the potential for harm to a physical trust asset, previously identified in a periodic review and evaluation, exists; or

(e) As the Secretary determines appropriate to carry out the Secretary's trust responsibilities.

### NONCOMPLIANCE

### **§ 224.136 How will the Secretary's report address a Tribe's noncompliance?**

This section applies if the Secretary conducts a review and evaluation or investigation of a notice of violation of Federal law or the terms of a TERA.

(a) If the Secretary determines that the Tribe has not complied with Federal law or the terms of a TERA, the Secretary's written report must include a determination of whether the Tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset.

(b) If the Secretary determines that the Tribe's noncompliance may cause harm or has caused harm to a physical trust asset, the Secretary must also determine whether the noncompliance cause imminent jeopardy to a physical trust asset.

### **§ 224.137 What must the Secretary do if a Tribe's noncompliance has resulted in harm or the potential for harm to a physical trust asset?**

If, because of the Tribe's noncompliance with Federal law or the terms of a TERA, the Secretary determines that there is harm or the potential for harm to a physical trust asset that does not rise to the level of imminent jeopardy to a physical trust asset, the Secretary must:

(a) Document the issue in the written report of the review and evaluation;

(b) Report the issue in writing to the Tribal governing body;

(c) Report the issue in writing to the Assistant Secretary—Indian Affairs; and