

head of each affected Federal agency shall waive any applicable statutory, regulatory, or administrative requirement, regulation, policy, or procedure promulgated by the agency that has been identified by the parties under subparagraph² (b).

(2) Exception

The head of an affected Federal agency shall not grant a waiver under paragraph (1) if the head of the affected agency determines that a waiver will be inconsistent with—

(A) the purposes of this chapter; or

(B) the provision of law from which the program included in the plan derives its authority that is specifically applicable to Indians.

(e) Decision on waiver request

(1) In general

Not later than 90 days after the head of an affected agency receives a waiver request, the head of the affected agency shall decide whether to grant or deny the request.

(2) Denial of request

If the head of the affected agency denies a waiver request, not later than 30 days after the date on which the denial is made, the head of the affected agency shall provide the requesting Indian tribe and the Secretary with written notice of the denial and the reasons for the denial.

(3) Failure to act on request

If the head of an affected agency does not make a decision under paragraph (1) by the deadline identified in that paragraph, the request shall be considered to be granted.

(f) Secretarial review

If the head of an affected agency denies a waiver request under subsection (e)(2), not later than 30 days after the date on which the request is denied, the Secretary shall review the denial and determine whether granting the waiver—

(1) will be inconsistent with the provisions of this chapter; or

(2) will prevent the affected agency from fulfilling the obligations of the affected agency under this chapter.

(g) Interagency dispute resolution

(1) In general

Not later than 30 days after the date on which the Secretary determines that granting the waiver will not be inconsistent with the provisions of this chapter and will not prevent the affected agency from fulfilling the obligations of the affected agency under this chapter, the Secretary shall establish and initiate an interagency dispute resolution process involving—

(A) the Secretary;

(B) the participating Indian tribe; and

(C) the head of the affected agency.

(2) Duration

A dispute subject to paragraph (1) shall be resolved not later than 30 days after the date on which the process is initiated.

(h) Final authority

If the dispute resolution process fails to resolve the dispute between a participating Indian tribe and an affected agency, the head of the affected agency shall have the final authority to resolve the dispute.

(i) Final decision

Not later than 10 days after the date on which the dispute is resolved under this section, the Secretary shall provide the requesting Indian tribe with—

(1) the final decision on the waiver request; and

(2) notice of the right to file an appeal in accordance with the applicable provisions described in section 3407(d) of this title.

(Pub. L. 102-477, §7, Oct. 23, 1992, 106 Stat. 2303; Pub. L. 106-568, title XI, §1103(c), Dec. 27, 2000, 114 Stat. 2932; Pub. L. 115-93, §8, Dec. 18, 2017, 131 Stat. 2029.)

Editorial Notes

AMENDMENTS

2017—Pub. L. 115-93 amended section generally. Prior to amendment, text read as follows: “Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal agency providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal agency regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision of law, the Secretary of the affected agency shall have the authority to waive any statutory requirement, regulation, policy, or procedure promulgated by that agency that has been so identified by such tribal government or agency, unless the Secretary of the affected agency determines that such a waiver is inconsistent with the purposes of this chapter or those provisions of the statute from which the program involved derives its authority which are specifically applicable to Indian programs.”

2000—Pub. L. 106-568 substituted “Federal agency” for “Federal department” and “Federal agency regulations” for “Federal departmental regulations”, substituted “agency” for “department” wherever appearing, and inserted “statutory requirement,” after “to waive any”.

§ 3407. Plan approval; Secretarial authority; review of decision

(a) In general

The Secretary shall have exclusive authority to approve or disapprove a plan submitted by an Indian tribe in accordance with section 3405 of this title.

(b) Approval process

(1) In general

Not later than 90 days after the date on which the Secretary receives a plan, the Secretary shall, after coordinating with the Secretary of each Federal agency providing funds to be used to implement the plan, approve or deny the plan.

(2) Approval

If the Secretary approves a plan under paragraph (1), the Secretary shall authorize the transfer of program funds identified in the

²So in original. Probably should be “subsection”.

plan in accordance with section 3412 of this title.

(3) Denial

If the Secretary denies the plan under paragraph (1), the Secretary shall provide to the Indian tribe a written notification of disapproval of the plan that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that the plan does not meet the requirements described in section 3405 of this title.

(4) Partial approval

(A) In general

If a plan is denied under paragraph (3) solely on the basis that a request for a waiver that is part of the plan has not been approved (or is subject to dispute resolution) under section 3406 of this title, the Secretary shall, upon a request from the tribe, grant partial approval for those portions of the plan not affected by the request for a waiver.

(B) Approval after resolution

With respect to a plan described in subparagraph (A), on resolution of the request for a waiver under section 3406 of this title, the Secretary shall, on a request from the tribe, approve the plan or amended plan not later than 90 days after the date on which the Secretary receives the request.

(5) Failure to act

If the Secretary does not make a decision under paragraph (1) within 90 days of the date on which the Secretary receives the plan, the plan shall be considered to be approved.

(c) Extension of time

Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period identified in subsection (b)(1) for not more than 90 additional days, if, before the expiration of the period, the Secretary obtains the express written consent of the Indian tribe.

(d) Review of denial

(1) Procedure upon refusal to approve plan

If the Secretary denies a plan under subsection (b)(3), the Secretary shall—

(A) state any objections in writing to the Indian tribe;

(B) provide assistance to the Indian tribe to overcome the stated objections; and

(C) unless the Indian tribe brings a civil action under paragraph (2), provide the Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate.

(2) Civil actions

(A) In general

The district courts of the United States shall have original jurisdiction of a civil action against the appropriate Secretary arising under this section.

(B) Administrative hearing and appeal not required

An Indian tribe may bring a civil action under this paragraph without regard to

whether the Indian tribe had a hearing or filed an appeal under paragraph (1).

(C) Relief

In an action brought under this paragraph, the court may order appropriate relief (including injunctive relief to reverse a denial of a plan under this section or to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under this chapter or regulations promulgated thereunder) against any action by an officer or employee of the United States or any agency thereof contrary to this chapter or regulations promulgated thereunder.

(3) Final agency action

Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (collectively referred to in this paragraph as the “Department”) that constitutes final agency action and that relates to an appeal within the Department that is conducted under paragraph (1)(C) shall be made—

(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or

(B) by an administrative law judge.

(Pub. L. 102-477, §8, Oct. 23, 1992, 106 Stat. 2303; Pub. L. 106-568, title XI, §1103(d), Dec. 27, 2000, 114 Stat. 2932; Pub. L. 115-93, §9, Dec. 18, 2017, 131 Stat. 2030.)

Editorial Notes

AMENDMENTS

2017—Pub. L. 115-93 amended section generally. Prior to amendment, text read as follows: “Within 90 days after the receipt of a tribal government’s plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary’s approval or disapproval of the plan, including any request for a waiver that is made as part of the plan submitted by the tribal government. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval, including reconsidering the disapproval of any waiver requested by the Indian tribe.”

2000—Pub. L. 106-568 inserted “, including any request for a waiver that is made as part of the plan submitted by the tribal government” after “disapproval of the plan” and “, including reconsidering the disapproval of any waiver requested by the Indian tribe” after “reconsider such disapproval”.

§ 3408. Job creation activities authorized

(a) In general

The plan submitted by a tribal government may involve the expenditure of funds for the creation of employment opportunities and for the development of the economic resources of the tribal government or of individual Indian people if such expenditures are consistent with an overall regional economic activity which has a reasonable likelihood of success and consistent with the purposes specifically applicable to In-